TRANSNET

freight rail

Transnet Freight Rail a Division of Transnet SOC Ltd. (Reg. No. 1990/000900/30), invites all interested parties to respond to a request for quotation (RFQ) as indicated below:

All tenders should be submitted on the appropriate tender forms in a sealed envelope. The envelope must indicate the RFQ number, full description and closing date and should be deposited in the tender box before 10h00 on the closing date of the tender/s.

**If delivered by hand, the Tender submissions must be addressed to Supply Chain Services, Admin Support, Tender Box, Office No. 2, Real Estate Management Building, Austen Street, Beaconsfield, Kimberley.**

**ISSUE OF DOCUMENTS** - RFQ documents may be obtainable **FREE OF CHARGE** on after **8 February 2016** until **22 February 2016 [15:00]** at Transnet Freight Rail, Supply Chain Services, Office No. 2, Real Estate Management Building, Austen Street, Beaconsfield, Kimberley. **Please note that RFQ document can be e-mailed or physically collected on request / arrangement prior to cut off time.**

**ISSUE OF DOCUMENT –** RFQ document will only be issued until **22 February 2016 at 15:00. NO RFQ DOCUMENTS WILL BE ISSUED AFTER 15:00.**

Tenders can be viewed on the website (http://www.transnetfreightrail.tfr.net/Supplier/Pages/Tenders.aspx

**DOCUMENTS and SAFETY APPAREL** – Please bring the valid tender document on the day of the briefing as no copy will be issued on site. For safety reason, bring your safety shoes and reflective vest for the site meeting/inspection.

***For collection of documents, send e-mail to: : Leonie.Visagie@transnet.net - Tel: 053 838 3119**

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| | |
|---|---|
| **RFQ NUMBER** | **KBY/53846** |
| **SCOPE OF WORK** | **As & when earthworks maintenance including grading of service roads, Kimberley South for a period of eight (8) months.** |
| **REQUIRED AT** | **Belmont-Douglas, De Aar-Groveput, Groveput-Upington, Belmond-Orange River, Orange River-De Aar, Upington-Namibia Border, Upington-Kakamas, De Aar-Hutchinson, Hutchinson-Three Sisters and Three Sisters-Beaufort West**<br><br>**A COMPULSORY INFORMATION MEETING WILL BE HELD AT:**<br><br>**Real Estate Management Building, Austen Street, Beaconsfield, Kimberley** |
| **BRIEFING DATE** | **DATE: 23 February 2016 at 10:00 (Companies not attending the compulsory tender briefing / site meeting will be overlooked during the award process.)** |
| **COMPULSORY** | |
| **CLOSING DATE** | **Tuesday, 8 March 2016 at Kimberley** |
| **CLOSING TIME** | **10:00** |
| **For technical queries contact:** | Mr. Christie Noeth, Tel: 053-838 3050 / 083 294 2734<br><br>Ref. CW |

**Transnet Freight Rail urges Clients & Suppliers to report fraud/corruption at Transnet to TIPOFFS ANONYMOUS: 0800 003 056**

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A Division of Transnet SOC Limited Registration number 1990/00900/30

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# REQUEST FOR QUOTATION KBY/53846

**KBC_20577**

## AS & WHEN EARTHWORKS MAINTENANCE INCLUDING GRADING OF SERVICE ROADS KIMBERLEY SOUTH (Belmont - Douglas, De Aar - Groveput and Groveput - Upington, Belmond - Orange River and Orange River - De Aar, Upington - Namibia Border, Upington- Kakamas, De Aar – Hutchinson, Hutchinson – Three Sisters and Three Sisters – Beaufort West)

Senior Buyer
Supply Chain Services
TRANSNET FREIGHT RAIL
Austen Street
KIMBERLEY
8301

TRANSNET

**TRANSNET FREIGHT RAIL**, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

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**REQUEST FOR QUOTATION [RFQ] No KBY/53846**

**AS & WHEN EARTHWORKS MAINTENANCE INCLUDING GRADING OF SERVICE ROADS KIMBERLEY SOUTH FOR A PERIOD OF 8 MONTHS (Belmont - Douglas, De Aar - Groveput and Groveput - Upington, Belmond - Orange River and Orange River - De Aar, Upington - Namibia Border, Upington- Kakamas, De Aar – Hutchinson, Hutchinson – Three Sisters and Three Sisters – Beaufort West)**

**FOR DELIVERY TO: KIMBERLEY SOUTH**

| | |
|---|---|
| **ISSUE DATE:** | **10 FEBRUARY 2016** |
| **CLOSING DATE:** | **08 MARCH 2016** |
| **CLOSING TIME:** | **10:00** |
| **SITE MEETING :** | **23 FEBRUARY 2016 AT 10:00 IN REM BOARDROOM, KIMBERLEY** |

## Section 1

## NOTICE TO BIDDERS

Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

| | |
|---|---|
| **METHOD:** | TENDER BOX |
| **CLOSING VENUE:** | THE TENDER BOX, ROOM 1, SUPPLY CHAIN SERVICES OFFICE, REAL ESTATE MANAGER'S BUILDING AUSTEN STREET, BEACONSFIELD,KIMBERLEY,8315 |

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### 1 Responses to RFQ

Responses to this RFQ [**Quotations**] must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

### 2 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. As described in more detail in the attached B-BBEE Claim Form Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included); and therefore the **80/20** system shall be applicable.

Respondents are required to complete Annexure A [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

**Note: Failure to submit a valid and original B-BBEE certificate or a certified copy thereof at the Closing Date of this RFQ will result in a score of zero being allocated for B-BBEE.**

### 3 Communication

Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: CHRISTOPHER WILLIAMS Email: CHRISTOPHER.WILLIAMS@TRANSNET.NET

Telephone: 053 838 3477

Respondents may also, at any time after the closing date of the RFQ, communicate with the Secretariat of the Transnet Acquisition Council on any matter relating to its RFQ response:

Telephone 011 308 3528 Email: TAC.SECRETARIAT@transnet.net

**4 Legal Compliance**

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

**5 Changes to Quotations**

Changes by the Respondent to its submission will not be considered after the closing date and time.

**6 Pricing**

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

**7 Prices Subject to Confirmation**

Prices quoted which are subject to confirmation will not be considered.

**8 Binding Offer**

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

**9 Disclaimers**

Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation or an alternative bid;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations ; or
- make no award at all.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to award business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

Transnet reserves the right to conduct Post Tender Negotiations (PTN) with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's discretion, any evaluation criteria listed in the RFQ document.

Should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so, Transnet reserves the right to award the business to the next highest ranked bidder, provided that he/she is still prepared to provide the required goods at the quoted price.

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**10 Specification/Scope of Work**

**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS : 0800 003 056**

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**Returnable Document**

**AS & WHEN EARTHWORKS MAINTENANCE INCLUDING GRADING OF SERVICE ROADS KIMBERLEY SOUTH FOR A PERIOD OF 8 MONTHS**

| | |
|---|---|
| **ISSUE DATE:** | **10 FEBRUARY 2016** |
| **CLOSING DATE:** | **08 MARCH 2016** |
| **CLOSING TIME:** | **10:00** |
| **CLOSING VENUE:** | **THE TENDER BOX, ROOM 1, SUPPLY CHAIN SERVICES OFFICE, REAL ESTATE MANAGER'S BUILDING AUSTEN STREET, BEACONSFIELD, KIMBERLEY, 8315** |

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Respondent's Signature

Date & Company Stamp

**A CONTRACT BETWEEN**

# TRANSNET LIMITED

(REGISTRATION No. 1990/00900/06)

**TRADING AS TRANSNET FREIGHT RAIL**

**AND**

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**FOR: EARTHWORKS MAINTENANCE INCLUDING GRADING OF SERVICE ROADS (As and When required)**

**KIMBERLEY SOUTH DEPOT AREA**

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| Conditions of Contract | CC1 (18 – 32) |


6

## Contract Data

The Employer is

| | |
|---|---|
| Name | Transnet Limited Trading as Transnet Freight Rail |
| Address | Property Management Building, Austen Street, BEACONSFIELD |
| Telephone | (053) 838 3477 Fax No. (053) 838 3007 |
| Cell | 083 320 3488 |
| E-mail | Christopher.Williams@transnet.net |

The works are: Earthworks Maintenance including grading of service roads on the Kimberley South Depot

The site is Beaconsfield – Belmont, Belmont – Oranjerivier, Oranjerivier – De Aar, De Aar – Hutchinson, Hutchinson – Three Sisters, Three Sisters – Beaufort West, De Aar – Groveput, Groveput – Upington, Upington – Nakop, Upington – Kakamas and Belmont - Douglas. (***Kimberley South Depot Area)***

The starting date is **02 May 2016**

The completion date is **31 January 2017**

The reply period is ***2 (Two)***..... week(s)

The defect correction (Remedial work) period is ***4(Four)***.....weeks after completion

The defect correction period is ***2 (Two)***..... weeks

The delay damages are ***0.5% of contract value***... per day

The retention is .10.....%

The Adjudicator is

| | |
|---|---|
| Name | To be advised if disputes arise..... |
| Address | ..... |
| Telephone | ..... Fax No. ..... |
| E-mail | ..... |

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## Contract Data

The interest rate on late payment is.....% per complete week of delay

The Contractor is not liable to the Employer for loss of or damage to the Employer's property in excess of..... For any one event

The *Employer* provides this insurance Transnet Principal Control Insurance

The minimum amount of cover for the third insurance stated in the Insurance Table is **> R25,000.00 (Limited to R10,000,000.00. for any one event)**

The minimum amount of cover for the fourth insurance stated in the Insurance Table is

**Not applicable**.....

The adjudicator nominating body is **The Chairman of the Association of Arbitrators (Southern Africa)**

The tribunal is **Arbitration**.....

If the tribunal is arbitration,

the arbitration procedure is **The rules for the Conduct of Arbitrators of the Association of Arbitrators (Southern Africa)**.....

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (June 2005) and the following additional conditions:

1. The Contractor shall ensure that a safety representative is at site at all times.
2. The Contractor shall, in particular, comply with the following Acts and Transnet Specifications:-
   i. The Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993. The Contractor shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act.
   ii. The Occupational Health and Safety Act (Act 85 of 1993).
   iii. The explosive Act No. 26 of 1956 (as amended). The Contractor shall, when applicable, furnish the Project Manager / Supervisor with copies of the permits authorising him or his employees, to establish an explosives magazine on or near the site and to undertake blasting operations in compliance with the Act.
   iv. The Contractor shall comply with the current Transnet Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational

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Health and Safety Act, Act 85 of 1993 and Regulations and shall before commencement with the execution of the contract, which shall include site establishment and delivery of plant, equipment or materials, submit to the Project Manager / Supervisor.

v. The Contractor shall comply with the current Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment – E7/1, if applicable, and shall take particular care of the safety of his employees on or in close proximity to a railway line during track occupations as well as under normal operational conditions.

3. The Contractor's Health and Safety Programme shall be subject to agreement by the Project Manager / Supervisor, who may, in consultation with the Contractor, order supplementary and/or additional safety arrangements and/or different safe working methods to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act

4. In addition to compliance with clause 2 hereof, the Contractor shall report all incidents in writing to the Project Manager / Supervisor. Any incident resulting in the death of or injury to any person on the works shall be reported within 24 hours of its occurrence and any other incident shall be reported within 48 hours of its occurrence

5. The Contractor shall make necessary arrangements for **sanitation, water** and electricity at these relevant sites during the installation of the equipment

6. The Contractor shall supply a **site diary** (with triplicate pages). This book shall be used to record any unusual events during the period of the work. Any delays to the work shall also be recorded such as delays caused by poor weather conditions, delays caused by permits being cancelled etc. The appointed Project Manager or Supervisor must countersign such delays. Other delays such as non-availability of equipment from 3rd party suppliers must be communicated to the Project Manager or Supervisor in writing

7. The Contractor shall supply a **site instruction book** (with triplicate pages). This book shall be used to record any instructions to the Contractor regarding problems encountered on site – for example the quality of work or the placement of equipment. This book shall be filled in by the Project Manager or Supervisor and must be countersigned by the Contractor.

8. Both books mentioned in 6 and 7 shall be the property of Transnet Freight Rail and shall be handed over to the Project Manager or Supervisor on the day of energising or handing over.

9. The Contractor will remain liable for contractual delivery dates irrespective of deficiencies discovered during workshop inspections

10. The contractor must have a complete **Safety file** with all relevant documents before commencing with the work.

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## 1 Description of the works

1.1 This project calls for the provision and operation of plant and operators to repair and maintain existing Transnet Freight Rail maintenance and access roads adjacent to the railway lines. In many instances there are bushes and small trees that have to be removed next to these roads that may hinder the safe passing of Transnet maintenance vehicles and trains.

1.2 The contractor is expected to do earthworks maintenance including grading of service roads at the specified places as indicated by the Technical Officer in a way as to restore the desired formation profiles next to the railway lines.

1.3 This also includes removal of sleepers, rocks, gravel, and screener spoil next to service road or rail and any other general earthworks as required.

1.4 The Contractor must be familiar with the procedures and techniques of civil maintenance works of this type and to comply with the required standards.

## 2 Sufficiency of contract and time to complete the works

A Site Inspection Certificate signed by the Technical Officer (compulsory) must be submitted with the quotation, and the submission thereof will be deemed to indicate the Contractor's acquaintance with the occurrence and extent of the works that need to be performed.

The contractor shall complete the works within **eight (8) months**.

The contractor shall be required to complete the works and have it approved in this period. This period shall be inclusive of weekends, and public holidays. Working hours for the contractor will be from 7:00 till 16:30 on weekdays.

## 3 Site establishment

Site establishment will be a once off payment at the start of the contract for the purpose of all requirements of doing the work for the agreed about period of time. The agreed about period of time will be noted in the site instruction book and failure to complete the work in this period of time will result in penalties.

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## 4 The site

Access to the sites will be via the Transnet service roads. The key for gates in the service road can be obtained from the Technical Officer, but it must be handed back on completion of the contract. Gates have to be kept closed at all times. No vehicle will be allowed to cross the railway line at any place except at level crossings.

No Transnet property like sleepers, rails, fencing, cables and ballast stone are to be removed from the site.

The repairs of any damages to the Transnet fencing/railway lines, Eskom power lines and Telkom will be for the Contractors account. The Contractor must arrange for the damage to be repaired within one day. Alternatively these costs will be deducted from the tendered amount, and Transnet will arrange for the repair of the damage.

## 5 To be supplied/provided by the contractor including Plant required

5.1 The Contractor shall provide sufficient personnel, material, plant and equipment for earthworks maintenance as identified according to the specification to complete the work successfully.

5.2 The Contractor is responsible to supply his own equipment, transport and labour to maintain these roads as identified according to the specification to complete the work successfully.

5.3 The Contractor must provide appointed persons (equipped with a whistle and white flags) to warn people on the site against approaching trains by blowing a whistle.

5.4 The contractor is responsible to use protective clothing and adhere to the safety rules and regulations of Act 85.

5.5 No accommodation or camping site will be provided by Transnet or be allowed on Transnet property.

5.6 One Motor Grader fitted with hydraulically operated adjustable blades and scarifier of minimum 13 000 kg mass and minimum 106 kW flywheel power to grade mechanization roads next to the railway line. (Daily rate) Wet tariff

5.7 One 10m³ Tipper Truck at a daily rate, wet tariff to be used for transporting filling material.

5.8 One 1m³ Tractor Loader Backhoe (TLB) 4x4 at a daily rate, wet tariff which is required to gather and prepare stockpiles of filling material, to load filling material and do other planned work as required.

5.9 One LDV (bakkie) to provide maintenance and logistical assistance to the above.

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5.10 Water truck (min 6000 litre) at a daily rate. **(As and when required)**

5.11 Sit on roller (min 2.5 ton) at a daily rate to be used with water car. **(As and when required)**

5.12 General workers may be required on an ad-hoc basis **(when needed)** 07:00 - 16:30 for additional unplanned work.

5.13 Removal of bushes and small trees may also be done by means of a TLB where needed.

5.14 Gravel from the borrow pits or filling material (ballast spoil) will be gathered with the use of a TLB and transported to the site by the tipper truck.

5.15 Levelling of filling material supplied by crushers at certain places - to be done by grader, TLB, roller and water car. (**As and when required**)

5.16 Low-bed to transport machinery. **(As and When required)**

## 6 Program for the execution of the works

It is required of the successful Tenderer to commence work two weeks after receiving letter of acceptance. The ending date of contract will be **31 January 2017**. It will be expected of the Contractor to inform the Technical Officer about his daily activities. This information is required in order to inform the Train personnel of activities adjacent to railway lines and is important for the safety of the Contractor and his personnel.

## 7 Penalty clause

Failing to complete of the works within the period as stipulated above or with any shorter period offered by the contenders and accepted by Transnet Freight Rail, the contractor shall pay to Transnet Freight Rail as penalty 0.5% of the contract amount for every day or part thereof during which the works remain incomplete. This will be deducted from the contract payment.

## 8 Insurance of the works

The Contractor shall take every precaution to protect the Works against damage of any kind and not to cause damage to property or injury to any person as a result of his execution of the works.

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The Contractor shall, in his interests, obtain insurance of his own site establishment, materials, plant, equipment and tools, as well as insurance for his motor vehicles and the common law liabilities of the Contractor as an employer. Transnet shall arrange insurance for public liability.

## 9 To be provided by Transnet

**The following services will be provided free of charge by Transnet Freight Rail where required:**

A Deputy Technical Officer will assist the Technical Officer on site where possible, for supervision of the works in order to monitor the Contractor's performance and ensure quality of the works.

Transnet will provide supervision and protection for work within 3 (three) of the railway line.

Safety Induction training for the contractor team will be given by a designated Transnet Safety

Representative(s) before the start of the contract.

Any new workers that join the team at a later stage will also be required to receive this training.

## 10 Final inspection of the works

Inspection of the work will be done on an ***on-going*** basis. If the work is found to be satisfactory, the Contractor will be allowed to submit a tax invoice monthly together with the job order (if any) depending on the arrangements between the contractor and the Technical Officer.

## 11 Measurement and Payment

Payment will be based on the successful completion of the works as specified in terms of the tender and where the Contractor has successfully achieved the standard of the specifications for the tender within the required time frame.

No payment will be made where the work has not been successfully completed accordance the specifications.

No payment for breakdowns.

Measurement and payment for work completed will be as follows:

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After the completion of the work, the Technical Officer and the Contractor will inspect the work performed.

**If the works is found to be satisfactory and according the specified specifications, the Contractor must submit a Tax invoice for completed work to the Technical Officer and shall receive his/her payment monthly based on the work completed and according to the tendered price as initially tendered for each specific railway section as indicated on the Schedule of Quantities.**

The Contractor will thereafter receive a final Completion Certificate to certify that the works under the agreement is finalised.

**Penalties of 0.5% of the contract amount for every day or part thereof during which the works remain incomplete will apply.**

## 12 Temporary Camps

No campsites or accommodation will be available to the Contractor on Transnet premises. The Contractor must arrange for all facilities needed and these costs must be included in the tender price.

No services like water or sanitation and electricity can be provided.

No open fires are allowed on Transnet property.

## 13 Pollution prevention and environmental awareness

According to the Environmental Management System of the Transnet, pollution must be prevented as far as possible. Where pollution occurs due to the negligence of the Contractor, he/she will be responsible for corrective actions or he/she will be held liable for corrective actions required.

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## 14 Performance monitoring and evaluation

Transnet Freight Rail shall inspect the work completed according to the specification compiled by the Technical Officer/Project Manager.

The Contractor shall at all times be responsible for the supervision of the work and for follow-up inspections to monitor the success of control achieved over the area. He /she shall immediately

take appropriate remedial action in areas where the specified standards of control are not achieved.

The Technical Officer or the Deputy shall at any time during the contract period carry out inspections of the Contractor's performance methods and procedures.

The Contractor shall carry out remedial work to areas where control has not been achieved, prior to the official inspections. Such remedial work may include: excess solid waste removal to a designated area as indicated by the Technical Officer or the Deputy, grading of service road to the specified requirements, removing the waste material away from the opening of the culverts or any other works as described under the specification of the works for this contract.

## 15 Pricing including exceptions

The contractor should note that **no exception** will be made for any contractor in failing to complete the work on time.

The Contractor shall submit with his/her tender with a complete and detailed priced schedule (prepared in ink) for the works.

If the Contractor has omitted to price any items in the schedule, the cost of the work included in such items will be held to be spread over and included in the prices given for other items of work.

Reasonable prices should therefore be inserted for every item as these prices may be considered in adjudication of the quotation.

The contractor must know that the price quoted/submitted will be final and no additional requests will be granted.

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## 16 Drawings/diagrams/photos

A diagram of stations and sidings will be supplied by the Technical Officer. Line diagrams, indicating the service roads to be graded, will be supplied to the successful Contractor at the start of the contract.

## 17 Specifications

| Title | Date or revision | Tick if publicly available |
|---|---|---|
| E7/1Specification for works on-, over-, under- or adjacent to railway lines and near high voltage equipment | **2011** | |
| E.4E Safety arrangements and procedural compliance with the Occupational Health and Safety Act, Act 85 of 1993 and regulations E.4D and E.4B | **2011** | |
| S410 Transnet Specifications for Railway Earthworks | **2006** | |

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## 18 Constraints on how the Contractor Provides the Works as well as Health, Risk and Safety requirements

18.1 The Contractor shall comply with Transnet Electrical Safety Instructions

18.2 The Contractor shall provide their own protection if needed ei. Flagman

18.3 The Contractor shall provide all necessary equipment and plant to execute the job

18.4 The Contractor shall deliver and maintain the plant complete in all respects, in a fully operational condition, with operators, at the initial place of work as directed.

18.5 The time taken to move plant from one working place to another will be treated as working time when the plant is moved under its own power.

18.6 It will be expected from the contractor to move his own caravans between stations at its own cost.

18.7 Fuel, water and spare wheels must be readily available on site so that no unnecessary lost time is created. The Contractor must provide a worker equipped with a LDV to provide assistance to the grader and TLB to perform these tasks.

Before any work commences the Contractor is to do a risk assessment of each situation and to provide a written safety plan, of which, a copy is to be kept on site with the Site Diary, Site Instruction Book and Calculation Book. In the safety plan the Contractor must clearly state his/her intentions to provide a safe environment for his workers when working in the culverts. This safety plan is to be provided and implemented by the contractor before the work commences.

Provision must be made in the safety plan for the following risks:

- Working adjacent to passing trains.
- Transporting of material and workers to and from work site.
- Loading and off-loading of equipment and material.
- Working close to Overhead Traction Equipment.
- Electrical shock.
- Uneven surfaces.
- Blue asbestos.
- Level Crossing Awareness of Operators and Drivers.
- No work may be performed within 3 (three) metres of the railway line without adequate Transnet supervision and protection.

The Contractor shall supply all the necessary Personal Protective Equipment to each person working on the site. This will include items such as safety boots, hand gloves, dust masks and other protective clothing needed to protect the workers against all the risks which may be encountered on site.

Before the Contractor commences with any work, the entire team will be required to attend a compulsory 1 hour long Safety Talk given by a designated Transnet Safety Representative. Any new workers that join the team at a later stage will also be required to receive this training.

Before the contractor may start any work, he and his entire team will be required to attend a OHTE awareness training, The Supervisors to do Competency training for 3 days.

Training will be provided by Transnet but travelling and accommodation expenses are for the contractor's account.

The Contractor shall provide at his/her own cost any security/safety measures he/she may deem necessary for safe and effective execution of the work. The Contractor will be fully responsible to provide all Safety measurers deemed necessary to safe guard his/her personnel for the safe completion of the work under contract.

This work is to be carried out close to railway lines with trains moving and passing directly next to the work area. No work is to be done within a 3m distance of a railway line without the presence of a flagman and Track Inspector/Master or without notifying the CTC.

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The Contractor or his supervisor must have a Safety Talk every morning before work begins to remind the workers to be on the lookout for trains and to make the workers aware of the dangers of working underneath electrified traction lines. Record of what was discussed shall be recorded in the "Site Diary". Contractor must call CTC every morning on to notify them where they will work during that day.

The Contractor is to have available a suitable First Aid Kit on site at all times.

All workers shall work as a team in one area in the Transnet Freight Rail's reserve.

The personnel of the Contractor shall at all times while on Transnet property and during the operations wear reflective safety jackets/vests and boots. These reflective jackets/vests must preferably bear the name of the contractor's company.

**High voltage electrical equipment:**

The attention of the **Contractor** is drawn to the possibility of "live" electrical overhead wires or buried cables in the area covered by the contract and the danger of coming into contact with such wires. All personnel under the control of the **Contractor** shall be made aware of the danger of "live" electrical wires and cables before commencement of the work

The **Contractor** shall comply with all requirements of the **E7/1 (July 1998)** Specification. In particular the **Contractor** shall not be allowed to drive or move mobile equipment on or over the ballast and track-work unless the Technical Officer grants suitable permission and proper methods are employed.

Where the work is undertaken on or near high-voltage electrical equipment which is not maintained and/or operated by Transnet, the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, or the Mines Health and Safety Act (Act 29 of 1996), shall apply.

Such equipment includes: -

Eskom and municipal equipment;

The Contractor's own power supplies; and

Electrical equipment being installed but not yet taken over from the Contractor

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**Protection:** The Contractor shall provide all protection functions at the work area as required by the Technical Officer and according to the rules and regulations as stipulated in the **Infrastructure Safety Guidelines,** *page 51 to 72.*

The **Contractor** shall be liable for costs incurred by Transnet as a result of failure on the part of the **Contractor** or his personnel, to observe any safety and security regulations of Transnet regarding the entry of personnel into all sites. Transnet will determine such costs.

The contractor or his supervisor will be responsible to hold a Safety Talk every morning before work commences. He will also be responsible to notify CTC each morning to inform them where his team will be working on that day.

The contractor is to have available a suitable First Aid Kit on site at all times.

All workers shall work as a team in one area in the Transnet reserve.

The contractor shall provide a cell phone, in good working order and with sufficient airtime, to his team leader to be available on site at all times.

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## 19 Requirements for the programme

19.1 The Contractor shall provide a programme in a form of excel which indicates how many gabions can be installed in a day depending on the site situations

19.2 The Contractor shall submit the programme to the Project Manager/Technical Officer a week before the commencement of work

19.3 The Contractor shall update the programme at the end of day and give feedback to the Employer's Representative on site

## 20 Services and other things provided by the Employer

| | | |
|---|---|---|
| 20.1 | Technical Officer's services | from the start of the contract |
| 20.2 | Site Access | from the start of the contract |

## 21 Special conditions

Prior to the commencement of any work the Contractor and the Technical Officer will travel the road where maintenance is due to identify trouble spots and to decide on areas where additional fill must be provided to repair the road. Volumes of fill will be determined and borrow pits will be pointed out. At the same time bushes and trees that need to be removed will be identified.

After this has been completed the Contractor must provide a written plan on how the work will be done and how and when machines will be utilized. A copy of this must be attached to the Site Instruction book by the Contractor.

As part of the contract the contractor is to provide a full time worker, plus a LDV, who will be responsible for the day to day logistics of the team(s) on site. This worker must at all times be in possession of a cell phone (in good working order) so that he can be contacted by the Technical Officer of Transnet Freight Rail and that he can use it in case of emergencies.

The service road is to be graded at a width of 6m (six) metres. Where this is not possible it may be reduced with the consent of the Technical Officer.

A strip 2 (two) metres wide, on either side of the service road, must be cleared of all bushes, shrubs and trees to serve as a fire break. Where this is not possible this width may be reduced at the consent of the Technical Officer.

Roads to be graded including the removal of sleepers, rocks, gravel, and screener spoil next to service road or rail and any other general earthworks required and so that on completion there is no windrow touching the wires of the boundary stock fence.

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Where possible roads are to be graded such that storm water runs off into adjacent property and not channelled in the mechanization road. Run-offs are to be cut into the windrow on boundary side against all slopes to prevent water damage to road surface.
A ±1:25 gradient leading the flow of water away from the rail formation will be sufficient

In general the horizontal and vertical alignment will follow the same route as the existing road. A turning circle with a radius of 8m will be constructed every Kilometre for the safe turning of all service vehicles. At culverts make sure that no windrow blocks the flow of water.After the road has been graded it must have an even surface.

All loose stones on the road surface must be removed by a stone thrower.

Costs will be recovered from the Contractor for damage to fencing and other Transnet assets.

CTC must be contacted by the Contractor on a daily basis before work commences to inform them of the kilometre points where work will be done for that day.
Tel: 053 838 2576 (Kimberley), when the contract is working in the sections away from Kimberley, contact detailed will be obtained from the Technical Officer

For the duration of the contract Mr. Christie Noeth will be the Technical Officer and contact person. Tel: 053 838 3050 or Cell: 083 294 2734. And Sibongile Gaya will be the deputy Technical Officer.

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## Contract Data

### Site Information

1. The ground surfaces on site are uneven, proper precaution should be taken while working and walking on the ballast, the terrain is also not level.
2. On site there can be a movement of on track-machines, proper precautions and protection should be applied
3. The Contractor shall not cross any private property or Transnet tracks without prior written approval from the legal owner of that property. No unauthorised level crossings shall be permitted.
4. Access to the sites will be via the Transnet service roads. The key for gates in the service road can be obtained from the Technical Officer, but it must be handed back on completion of the contract. Gates have to be kept closed at all times. No vehicle will be allowed to cross the railway line at any place except at level crossings.

| Section | Service Road | Track kilometres |
|---|---|---|
| **Belmont – Oranjerivier** | **±33.877 km** | **±33.283 km** |
| **Oranjerivier – De Aar** | **±55.751 km** | **±112.274 km** |
| **Belmont – Douglas** | **±73.344 km** | **±85.743 km** |
| **De Aar – Groveput** | **±132.360 km** | **±192.110 km** |
| **Groveput – Upington** | **±151.653 km** | **±218.704 km** |
| **Upington – Nakop** | **±77.218 km** | **±136.881 km** |
| **Beaconsfield – Belmont** | **±77.218 km** | **±85.504 km** |
| **De Aar – Hutchinson** | **±77.218 km** | **±130.190 km** |
| **Hutchinson – Three Sisters** | **±77.218 km** | **±49.304 km** |

21

| | | |
|---|---|---|
| **Three Sisters – Beaufort West** | **±77.218 km** | **±79.319 km** |
| **Upington – Kakamas** | **±77.218 km** | **±88.454 km** |
| **Total kilometres** | **±524.203 km** | |

# CONDITIONS OF CONTRACT

## 1 General

### Actions 10

10.1 The Employer and the Contractor shall act as stated in this contract and in a spirit of mutual trust and co-operation.

### Identified and defined terms 11

11.1 In the conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) Completion is when the Contractor has completed the works in accordance with the Works Information except for correcting notified Defects which do not prevent the Employer from using the works and others from doing their work.

(2) The Completion Date is the completion date unless later changed in accordance with this contract.

(3) A Defect is a part of the works which is not in accordance with the Works Information.

(4) The Defects Certificate is either a list of notified Defects which the Contractor has not corrected by the defects date or a statement that there are no such Defects.

(5) Defined Cost is the amount paid by the Contractor in Providing the Works (excluding any tax which the Contractor can recover) for

- people employed by the Contractor,
- Plant and Materials,
- work subcontracted by the Contractor and
- Equipment.

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The amount for Equipment includes amounts paid for hired Equipment and an amount for the use of Equipment owned by the Contractor which is the amount the Contractor would have paid if the Equipment had been hired.

(6) Equipment is items provided by the Contractor, used by him to Provide the Works and not included in the works.

(7) The Parties are the Employer and the Contractor.

(8) Plant and Materials are items intended to be included in the works.

(9) The Price for Work Done to Date is the total of

- the Price for each lump sum item in the Price List which the Contractor has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the Contractor has completed by the rate.

(10) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated

(11) To Provide the Works means to do the work necessary to complete the works in accordance with this contract and all incidental work, services and actions which this contract requires.

(12) Site Information is information which describes the site and its Surroundings and is in the document called 'Site Information'.

(13) Works Information is information which either

- specifies and describes the works or
- states any constraints on how the Contractor Provides the Works and is either
- in the document called 'Works Information' or
- in an instruction given in accordance with this contract.

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**Law 12**

12.1 This contract is governed by the law of the country where the site is.

12.2 No change to this contract, unless provided for by the conditions of contract, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

12.3 This contract is the entire agreement between the Parties.

**Communications 13**

13.1 Each communication which this contract requires has effect when it is received in writing at the last address notified by the recipient for receiving communications.

13.2 If this contract requires the Employer or the Contractor to reply to a

communication, unless otherwise stated in this contract, he replies within the period for reply.

**The Employer's authority and delegation 14**

14.1 The Contractor obeys an instruction which is in accordance with this contract and is given to him by the Employer.

14.2 The Employer may give an instruction to the Contractor which changes the Works Information.

14.3 The Employer's acceptance of a communication from the Contractor or of his work does not change the Contractor's responsibility to Provide the Works or his liability for his design.

14.4 The Employer, after notifying the Contractor, may delegate any of the Employer's actions and may cancel any delegation. A reference to an action of the Employer in this contract includes an action by his delegate.

**Access to the site and provision of services 15**

15.1 The Employer allows access to and use of the site to the Contractor as necessary for the work included in this contract.

15.2 The Employer provides services and other things as stated in the Works Information.

**Early warning 16**

16.1 The Contractor and the Employer give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion or
- impair the performance of the works in use.

The Contractor may give an early warning by notifying the Employer of any other matter which could increase his total cost. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 The Contractor and the Employer co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

**2 The Contractor's main responsibilities**

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**Providing the Works 20**

20.1 The Contractor Provides the Works in accordance with the Works Information.

20.2 The Contractor does not start work which the Contractor has designed until the Employer has accepted that the design complies with the Works Information.

**Subcontracting and people 21**

21.1 If the Contractor subcontracts work, he is responsible for Providing the Works as if he had not subcontracted.

21.2 This contract applies as if a subcontractor's employees and equipment were the Contractor's.

21.3 The Employer may, having stated reasons, instruct the Contractor to remove an employee. The Contractor then arranges that, after one day, the employee has no further connection with the work included in this contract.

**Access for the Employer 22**

22.1 The Contractor provides access for the Employer and others notified by the Employer to work being done for this contract and to stored Plant and Materials.

**3 Time**

**Starting and Completion 30**

30.1 The Contractor does not start work until the starting date and does the work so that Completion is on or before the Completion Date.

30.2 The Contractor submits a forecast of the date of Completion to the Employer each week from the starting date until Completion.

30.3 The Employer decides the date of Completion and certifies it to the Contractor within one week of the date.

30.4 The Employer may instruct the Contractor to stop or not to start any work and may later instruct him to re-start or start it.

**The programme 31**

31.1 The Contractor submits programmes to the Employer as stated

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in the Works Information.

## 4 Defects

### Searching for and notifying Defects 40

40.1 Until the defects date, the Employer may instruct the Contractor to search for a Defect.

40.2 The Employer may notify a Defect to the Contractor at any time before the defects date.

### Correcting Defects 41

41.1 The Contractor corrects a Defect whether or not the Employer notifies him of it.

41.2 Before Completion, the Contractor corrects a notified Defect before it would prevent the Employer or others from doing their work.

41.3 After Completion, the Contractor corrects a notified Defect before the end of the defect correction period. This period begins at the later of Completion and when the Defect is notified.

41.4 The Employer issues the Defects Certificate to the Contractor at the later of the defects date and the end of the last defect correction period.

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### Uncorrected Defects 42

42.1 If the Contractor has not corrected a notified Defect within its defect correction period, the Employer assesses the cost of having the Defect corrected by other people and the Contractor pays this amount.

### Repairs 43

43.1 Until the Defects Certificate has been issued and unless otherwise Instructed by the Employer, the Contractor promptly replaces loss of and repairs damage to the works, Plant and Materials.

## 5 Payment

### Assessing the amount due 50

50.1 The Contractor assesses the amount due and, by each assessment day, applies to the Employer for payment. There is an assessment

day in each month from the starting date until the month after the Defects Certificate has been issued.

50.2 The Contractor's application for payment includes details of how the amount has been assessed. The first application for payment is for the amount due. Other applications are for the change in the amount due since the previous payment.

50.3 The amount due is

- the Price for Work Done to Date
- plus other amounts to be paid to the Contractor (including any tax which the law requires the Employer to pay to the Contractor)
- less amounts to be paid by or retained from the Contractor.

50.4 The Employer corrects any wrongly assessed amount due and notifies the Contractor of the correction before paying the Contractor.

50.5 The Contractor pays delay damages for each day from the Completion Date until Completion.

50.6 An amount is retained from the Contractor in the assessment of each amount due until Completion. This amount is the retention applied to the Price for Work Done to Date. The amount retained is halved in the first assessment made after Completion and remains at this amount until the assessment day after the Defects Certificate is issued. No amount is retained in the assessment made after the Defects Certificate has been issued.

50.7 If the Employer requires a programme to be submitted, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the Contractor has submitted a first programme to the Employer showing the information which the Works Information requires.

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**Payment 51**

51.1 The Employer pays within three weeks after the next assessment day which follows receipt of an application for payment by the Contractor.

51.2 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Contract Data

or, if none is stated, at 0.5% of the delayed amount per complete week of delay.

## 6 Compensation events

### Compensation events 60

60.1 The following are compensation events.

(1) The Employer gives an instruction changing the Works Information unless the change is in order to make a Defect acceptable.

(2) The Employer does not allow access to and use of the site to the Contractor as necessary for the work included in this contract.

(3) The Employer does not provide something which he is to provide by the date for providing it stated in this contract.

(4) The Employer gives an instruction to stop or not to start any work.

(5) The Employer does not work within the conditions stated in the Works Information.

(6) The Employer does not reply to a communication from the Contractor within the period required by this contract.

(7) The Employer changes a decision which he has previously Communicated to the Contractor.

(8) The Employer instructs the Contractor to search for a Defect and no Defect is found.

(9) The Contractor encounters physical conditions which

- are within the site,
- are not weather conditions and
- an experienced contractor would have judged, at the date of the Contractor's Offer, to have such a small chance of occurring that it would have been unreasonable to have allowed for them. Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

(10) The Contractor is prevented by weather from carrying out all work on the site for periods of time, each at least one

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full working day, which are in total more than one seventh of the total number of days between the starting date and the Completion Date. In assessing this event, only the working days which exceed this limit and on which work is prevented by no other cause are taken into account.

(11) The Employer notifies a correction to an assumption which he has stated about a compensation event.

(12) An event which

- stops the Contractor completing the works or
- stops the Contractor completing the works by the Completion Date and which
- neither Party could prevent,
- an experienced contractor would have judged at the date of the Contractor's Offer to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

(13) A difference between the final total quantity of work done and the quantity stated for an item in the Price List.

(14) A loss of or damage to the works, Plant and Materials which

- is not the fault or responsibility of the Contractor or
- could not have been prevented by any reasonable action of the Contractor.

60.2 In judging the physical conditions for the purposes of assessing any compensation event, the Contractor is assumed to have taken into account

- the Site Information,
- publicly available information referred to in the Site Information,
- information obtainable from a visual inspection of the site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

**Notifying compensation events 61**

61.1 The Contractor notifies the Employer of an event which has

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happened or which he expects to happen as a compensation event if

- the Contractor believes that the event is a compensation event and
- the Employer has not notified the event to the Contractor.

If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event he is not entitled to a change in the Prices or Completion Date unless the event arises from an instruction of the Employer.

61.2 If the Employer decides that an event notified by the Contractor

- arises from a fault of the Contractor,
- has not happened and is not expected to happen,
- has no effect upon the Defined Cost or upon Completion or
- is not one of the compensation events stated in this contract,

he notifies the Contractor of his decision that the Prices and the Completion Date are not to be changed.

If the Employer decides otherwise, he instructs the Contractor to submit a quotation for the event. The Employer notifies the decision to the Contractor or instructs the Contractor to submit a quotation within one week of the Contractor's notification to the Employer of the event.

61.3 If the Employer decides that the Contractor did not give an early warning of the event which the Contractor could have given, the Employer notifies that decision to the Contractor when instructing the Contractor to submit a quotation.

61.4 If the Employer decides that the effects of a compensation event are too uncertain to be forecast reasonably, the Employer states assumptions about the event when instructing the Contractor to submit a quotation. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the Employer notifies a correction.

61.5 A compensation event is not notified after the defects date.

**Quotations for compensation events 62**

62.1 A quotation for a compensation event comprises proposed changes to the Prices or rates and any delay to the Completion

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Date assessed by the Contractor. The Contractor submits details of his assessment with each quotation. The Contractor submits a quotation within two weeks of being instructed to do so by the Employer or, if no such instruction is received, within two weeks Of the notification of a compensation event.

62.2 The Employer may instruct the Contractor to submit a quotation for a proposed instruction or a proposed changed decision. The Contractor does not put a proposed instruction or a proposed changed decision into effect.

62.3 The Employer replies within two weeks of the Contractor's submission. For a proposed instruction or proposed changed decision, the Employer's reply is

- notification that the proposed instruction will not be given or the proposed changed decision will not be made,
- notification of the instruction or changed decision as a compensation event and acceptance of the quotation or
- notification of the instruction or changed decision as a compensation event and notification that the Employer does not agree with the quotation.

For other compensation events, the Employer's reply is

- acceptance of the quotation or
- notification that the Employer does not agree with the quotation.

62.4 If the Employer does not agree with the quotation, the Contractor may submit a revised quotation within two weeks of the Employer's reply. If the Employer does not agree with the revised quotation or if none is received, the Employer assesses the compensation event and notifies the assessment.

62.5 After discussing with the Contractor different ways of dealing with the compensation event which are practicable, the Employer may instruct the Contractor to submit alternative quotations for a compensation event.

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**Assessing compensation events 63**

63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed

by multiplying the changed quantities of work by the appropriate rates in the Price List.

63.2 For other compensation events, the changes to the Prices are assessed by forecasting the effect of a compensation event upon the Defined Cost or, if the compensation event has already occurred, the assessment is based upon the Defined Cost due to the event which the Contractor has incurred. Effects on Defined Cost are assessed separately for

- people employed by the Contractor,
- Plant and Materials,
- work subcontracted by the Contractor and
- Equipment.

The Contractor shows how each of these effects is built up in each Quotation for a compensation event. The percentages for overheads and profit stated in the Contractor's Offer are applied to the assessed effect of the event on the Defined Cost.

63.3 The effects of compensation events upon the Defined Cost are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. The following are deducted from the Defined Cost for the assessment of compensation events

- the cost of events for which this contract requires the Contractor to insure and
- other costs paid to the Contractor by insurers.

63.4 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed.

63.5 If the Employer has decided and notified the Contractor that the Contractor did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the Contractor had given early warning.

63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which are at the Contractor's risk under this contract.

63.7 Assessments are based on the assumptions that the Contractor reacts competently and promptly to the compensation event and that any additional cost and time due to the event are reasonably incurred.

63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices

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and the Completion Date were for the interpretation most favourable to the Party which did not provide the Works Information.

63.9 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

## 7 Title

### Objects and materials within the site70

70.1 The Contractor has no title to an object of value or of historical or other interest within the site. The Contractor does not move such an object unless instructed to do so by the Employer.

70.2 The Contractor has title to materials from excavation and demolition only as stated in the Works Information.

## 8 Indemnity, insurance and liability

### Limitation of liability 80

80.1 For any one event, the liability of the Contractor to the Employer for loss of or damage to the Employer's property is limited to the amount stated in the Contract Data. The Contractor is not liable to the Employer for the Employer's indirect or consequential loss except as provided for in the conditions of contract. Exclusion or limitation of liability applies in contract, tort or delict and otherwise and to the maximum extent permitted in law.

### Indemnities 81

81.1 The Employer indemnifies the Contractor against claims, proceedings, compensation and costs payable which are the unavoidable result of the works or of Providing the Works or which arise from

- fault,
- negligence,
- breach of statutory duty,
- infringement of an intellectual property or
- interference with a legal right by the Employer or by a person employed by or contracted to the Employer except the Contractor.

81.2 The Contractor indemnifies the Employer against other

- losses and claims in respect of
- death of or injury to a person and
- loss of and damage to property (other than the works, Plant and Materials) and

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- claims, proceedings, compensation and costs payable arising from or in connection with the Contractor's Providing the Works.

81.3 The liability of one Party to indemnify the other is reduced to the extent that events which are the other Party's responsibility contributed to the losses, claims, proceedings, compensation and costs.

**Insurance cover 82**

82.1 The Contractor provides, in the joint names of the Parties and from the starting date, the insurances stated in the Insurance Table. The Contractor does not provide an insurance which the Employer is to provide as stated in the Contract Data.

## 9 Termination and dispute resolution

**Termination and reasons for termination 90**

90.1 If either Party wishes to terminate the Contractor's obligation to Provide the Works, he notifies the other Party giving details of his reason for terminating. The Employer issues a termination certificate promptly if the reason complies with this contract. After a termination certificate has been issued, the Contractor does no further work necessary to Provide the Works.

90.2 Either Party may terminate if the other Party has become insolvent or its equivalent (Reason 1).

90.3 The Employer may terminate if the Employer has notified the Contractor that the Contractor has defaulted in one of the following ways and the Contractor has not stopped defaulting within two weeks of the notification.

- Substantially failed to comply with this contract (Reason 2).
- Substantially hindered the Employer (Reason 3).
- Substantially broken a health or safety regulation (Reason 4).

The Employer may terminate for any other reason (Reason 5).

90.4 The Contractor may terminate if

- the Employer has not made a payment within ten weeks of the assessment day which followed receipt of the Contractor's application for it (Reason 6) or
- the Employer has instructed the Contractor to stop or not to start any substantial work or all work for a reason which is not the Contractor's fault and an instruction allowing the work to re-start or start has not been given within eight weeks (Reason 7).

90.5 The Employer may terminate if an event which the Parties could not reasonably prevent has substantially affected the Contractor's work for a continuous period of more than thirteen weeks (Reason 8).

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**Procedures on termination 91**

91.1 On termination, the Employer may complete the works himself or employ other people to do so. The Contractor leaves the site and removes the Equipment.

**Payment on termination 92**

92.1 The amount due on termination includes

- an amount due assessed as for normal payments,
- the cost of Plant and Materials provided by the Contractor which are on the site or of which the Contractor has to accept delivery and
- any amounts retained by the Employer.

92.2 If the Employer terminates for Reason 1, 2, 3 or 4, the amount due on termination also includes a deduction of the forecast additional cost to the Employer of completing the works.

92.3 If the Contractor terminates for Reason 1, 6 or 7 or if the Employer terminates for Reason 5, the amount due on termination also includes 5% of any excess of a forecast of the amount due at Completion had there been no termination over the amount due on termination assessed as for normal payments.

**Dispute resolution 93**

93.1 A dispute arising under or in connection with this contract is referred to and decided by the Adjudicator.

**The *Adjudicator*** 93.2 (1) The Parties appoint the Adjudicator under the NEC Adjudicator's Contract current at the starting date. The Adjudicator acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(2) If the Adjudicator is not identified in the Contract Data or if the Adjudicator resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the Adjudicator nominating body to choose one. The Adjudicator nominating body chooses an adjudicator within four days of the request. The chosen adjudicator becomes the Adjudicator.

(3) The Adjudicator, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

**The adjudication** 93.3 (1) A Party may refer a dispute to the Adjudicator if

- the Party notified the other Party of the dispute within four weeks of becoming aware of it and

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- between two and four further weeks have passed since the notification.

If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the Adjudicator or the tribunal.

(2) The Party referring the dispute to the Adjudicator includes with his referral information to be considered by the Adjudicator. Any more information is provided within two weeks of the referral. This period may be extended if the Adjudicator and the Parties agree.

(3) The Adjudicator may take the initiative in ascertaining the facts and the law related to the dispute. He may instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

(4) A communication between a Party and the Adjudicator is communicated to the other Party at the same time.

(5) If the Adjudicator's decision includes assessment of additional cost or delay caused to the Contractor, he makes his assessment in the same way as a compensation event is assessed.

(6) The Adjudicator decides the dispute and notifies the Parties of his decision and his reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties.

If the Adjudicator does not notify his decision within the time allowed, either Party may act as if the Adjudicator has resigned.

(7) Unless and until the Adjudicator has notified the Parties of his decision, the Parties proceed as if the matter disputed was not disputed.

(8) The Adjudicator's decision is binding on the Parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by this contract that he intends to refer the matter to the tribunal.

**Review by the tribunal** 93.4 A Party may refer a dispute to the tribunal if

- the Party is dissatisfied with the Adjudicator's decision or

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- the Adjudicator did not notify a decision within the time allowed and a new adjudicator has not been chosen, except that neither Party may refer a dispute to the tribunal unless they have notified the other Party of their intention to do so not more than four weeks after the end of the time allowed for the Adjudicator's decision.

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## SECTION 2
## EVALUATION CRITERA AND RETURNABLE DOCUMENTS

### 1 EVALUATION CRITERIA

### 2 TRANSNET WILL UTILISE THE FOLLOWING CRITERIA [NOT NECESSARILY IN THIS ORDER] IN CHOOSING A SUPPLIER/SERVICE PROVIDER, IF SO REQUIRED:

| Criterion/Criteria | Explanation |
|---|---|
| **Administrative responsiveness** | Completeness of response and returnable documents |
| **Substantive responsiveness** | Prequalification criteria, if any, must be met and whether the Bid materially complies with the scope and/or specification given. |
| | |
| **Final weighted evaluation based on 80/20 preference point** | • Pricing and price basis [firm]<br>• B-BBEE status of company - Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Annexure A: B-BBEE Claim Form. |

### 3 Validity Period

Transnet desires a validity period of 90 [NINETY] Business Days from the closing date of this RFQ.

This RFQ is valid until _____.

### 4 Disclosure of Prices Quoted

Respondents must indicate here whether Transnet may disclose their quoted prices and conditions to other Respondents:

YES ☐ NO ☐

### 5 Returnable Documents

**Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

**All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.**

a) Respondents are required to submit with their Quotations the **mandatory Returnable Documents**, as detailed below.

***Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.***

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**Returnable Document**

Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the tables below:

| Mandatory Returnable Documents | Submitted [Yes or No] |
|---|---|
| SECTION 3 : Quotation Form | |
| Risk and Safety plan | |
| List of contactable references of previously successfully completed works | |

b) In addition to the requirements of section (a) above, Respondents are further required to submit with their Quotations the following **essential Returnable Documents** as detailed below.

***Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.***

| Essential Returnable Documents | Submitted [Yes or No] |
|---|---|
| SECTION 2 : Evaluation criteria and list of returnable documents | |
| - SECTION 4 : RFQ Declaration and Breach of Law Form | |
| - Valid and original, or a certified copy, of your entity's B-BBEE Verification Certification as per the requirements stipulated in Annexure A: B-BBEE Claims Form<br>Note: failure to provide these required documents at the closing date and time of the RFQ will result in an automatic score of zero being allocated for preference | |
| - Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party] | |
| ANNEXURE A – B-BBEE Preference Points Claim Form | |
| - Letter of Good Standing from the Department of Labour | |

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**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this RFQ. Should the Respondent be awarded the contract **[the Agreement]** and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

**Returnable Document**

## SECTION 3

## QUOTATION FORM

I/We_____

hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, this Quotation [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

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**Returnable Document**

## Price Schedule

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, excluding VAT:

| AS & WHEN EARTHWORKS MAINTENANCE INCLUDING GRADING OF SERVICE ROADS KIMBERLEY SOUTH FOR A PERIOD OF 8 MONTHS | | | | |
|---|---|---|---|---|
| **Item No:** | **Description** | **Unit** | **Qty** | **Rate** |
| 1 | Site establishment at start of contract | Sum | 1 | |
| 2 | Grader | Day | 150 | |
| 3 | Tipper Truck | Day | 150 | |
| 4 | TLB | Day | 150 | |
| 5 | LDV | Day | 150 | |
| 6 | Water Truck | Day | 150 | |
| 7 | Sit on Roller | Day | 150 | |
| 8 | Low Bed (unloaded) | Km | 1 | |
| 9 | Low Bed (loaded) | Km | 1 | |
| 10 | Risk and Safety | Sum | 1 | |
| 11 | Site de-establishment at end of contract | Sum | 1 | |
| | | | **Total Price =** | |
| | | | **VAT 14 % =** | |
| | | | **Gross Total =** | |

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**Amount in words excluding VAT:** _____

_____

**Delivery Lead-Time from date of purchase order :** _____ **[days/weeks]**

**Notes to Pricing:**

a) All Prices must be quoted in South African Rand, exclusive of VAT

b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.

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**Returnable Document**

Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

**By signing this Quotation Form the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar, and agrees, with all the conditions governing this RFQ, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise:**

1. Specifications and drawings included in this RFQ - if applicable; and
2. The following documents all of which are available on Transnet's website or upon request:
   - 2.1. General Bid Conditions;
   - 2.2. Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet;
   - 2.3. Supplier Integrity Pact;
   - 2.4. Non-disclosure Agreement; and
   - 2.5. Vendor Application Form and all supporting documents (first time vendors only)

     Alternatively, for all existing vendors, please provide vendor number(s) here:

| Transnet Operating Division | Unique Vendor Number | Yes / No |
|---|---|---|
| Transnet Group | | |
| TFR, etc. | | |
| | | |
| | | |

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s). Alternatively, Respondents are required to provide the updated information with their bid submission.

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SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES

1 _____

Name _____

2 _____

Name _____

ADDRESS OF WITNESSES

_____

_____

_____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

**Returnable Document**

## SECTION 4

## RFQ DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFQ Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];
3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. at no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner; and
6. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.
7. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.
8. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

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Respondent's Signature

Date & Company Stamp

**Returnable Document**

FULL NAME OF OWNER/MEMBER/DIRECTOR/
PARTNER/SHAREHOLDER: ADDRESS:

_____

_____

Indicate nature of relationship with Transnet:

_____

_____

*[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]*

9. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

**BREACH OF LAW**

10. We further hereby certify that *I/we* ***have/have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.
    Where found guilty of such a serious breach, please disclose:
    NATURE OF BREACH:
    _____
    _____
    _____

    DATE OF BREACH:_____
    Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20___

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**Returnable Document**

| | |
|---|---|
| For and on behalf of<br><br>_____<br><br>duly authorised hereto | AS WITNESS: |
| Name: | Name: |
| Position: | Position: |
| Signature: | Signature: |
| Date: | Registration No of Company/CC<br>_____ |
| Place: | Registration Name of Company/CC<br>_____ |

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TRANSNET

# Transnet Supplier Declaration/Application

The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company on to the Transnet vendor database. Please furnish us with the following to enable us to process this request:

1. Complete the "Supplier Declaration Form" **(SDF)** on page 2 of this letter
2. **Original** cancelled cheque **OR** letter from the bank verifying banking details **(with bank stamp)**
3. **Certified** copy of Identity document of Shareholders/Directors/Members (where applicable)
4. **Certified** copy of certificate of incorporation, CM29 / CM9 (name change)
5. **Certified** copy of share Certificates of Shareholders, CK1 / CK2 (if CC)
6. A letter with the company's letterhead confirming physical and postal addresses
7. **Original** or **certified** copy of SARS Tax Clearance certificate and Vat registration certificate
8. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (SANAS member).

*NB:* • ***Failure to submit the above documentation will delay the vendor creation process.***
• *Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a Service/Business contract between your business and the respective Transnet business unit etc.*

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**IMPORTANT NOTES:**

a) **If your annual turnover is less than R5 million,** then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company AND/OR BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), should you feel you will be able to attain a better BBBEE score.

b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).

c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent SANAS Member).

d) **To avoid PAYE tax being automatically deducted from any invoices received from you,** you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.

e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.

f) **Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Office.**

Regards,
Transnet Vendor/Supplier Management *[please substitute this with your relevant Transnet department before sending this document out]*

TRANSNET

# Supplier Declaration Form

| | | | | | | |
|---|---|---|---|---|---|---|
| Company Trading Name | | | | | | |
| Company Registered Name | | | | | | |
| Company Registration Number Or ID Number If A Sole Proprietor | | | | | | |
| Form of entity | CC | Trust | Pty Ltd | Limited | Partnership | Sole Proprietor |
| VAT number (if registered) | | | | | | |
| Company Telephone Number | | | | | | |
| Company Fax Number | | | | | | |
| Company E-Mail Address | | | | | | |
| Company Website Address | | | | | | |
| Bank Name | | Bank Account Number | | | | |
| Postal Address | | | | Code | | |
| Physical Address | | | | Code | | |
| Contact Person | | | | | | |
| Designation | | | | | | |
| Telephone | | | | | | |
| Email | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Annual Turnover Range (Last Financial Year) | < R5 Million | | R5-35 million | | > R35 million | |
| Does Your Company Provide | Products | | Services | | Both | |
| Area Of Delivery | National | | Provincial | | Local | |
| Is Your Company A Public Or Private Entity | | | Public | | Private | |
| Does Your Company Have A Tax Directive Or IRP30 Certificate | | | Yes | | No | |
| Main Product Or Service Supplied (E.G.: Stationery/Consulting) | | | | | | |

| **BEE Ownership Details** | | | | | | |
|---|---|---|---|---|---|---|
| % Black Ownership | | % Black women ownership | | % Disabled person/s ownership | | |
| Does your company have a BEE certificate | | Yes | | No | | |
| What is your broad based BEE status (Level 1 to 9 / Unknown) | | | | | | |
| How many personnel does the firm employ | | Permanent | | Part time | | |

| | |
|---|---|
| Transnet Contact Person | |
| Contact number | |
| Transnet operating division | |

| **Duly Authorised To Sign For And On Behalf Of Firm / Organisation** | | | |
|---|---|---|---|
| Name | | Designation | |
| Signature | | Date | |

| **Stamp And Signature Of Commissioner Of Oath** | | | |
|---|---|---|---|
| Name | | Date | |
| Signature | | Telephone No. | |

**NB: Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products.**

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ANNEXURE A : B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [**B-BBEE**] Status Level of Contribution.

## 1. INTRODUCTION

1.1 A total of 20 preference points shall be awarded for B-BBEE Status Level of Contribution.

1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [**SANAS**] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [**IRBA**] or an Accounting Officer as contemplated in the Close Corporation Act [**CCA**] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.

1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

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## 2. GENERAL DEFINITIONS

2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 **"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;

2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];

2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can utilised have been taken into consideration;

2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;

2.8 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;

2.9 **"EME"** means any enterprise with an annual total revenue of R5 [five] million or less as per the

2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of R10 [ten] million or less as per the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928;

2.10 **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

2.12 **"non-firm prices"** means all prices other than "firm" prices;

2.13 **"person"** includes reference to a juristic person;

2.14 "**QSE**" means any enterprise with an annual total revenue between R5 [five] million and R35 [thirty five] million as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of between R10 [ten] million and R50 [fifty] million as per the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928

2.15 "**rand value**" means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

2.16 **"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;

2.17 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;

2.18 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

2.19 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

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## 3. ADJUDICATION USING A POINT SYSTEM

3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.

3.3 Points scored will be rounded off to 2 [two] decimal places.

3.4 In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more Bids have scored equal points including equal preference points for B-BBEE, the successful Bid will be the one scoring the highest score for functionality.

3.6 Should two or more Bids be equal in all respect, the award shall be decided by the drawing of lots.

## 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

4.1 In terms of the Preferential Procurement Regulations, 2011, preference points shall be awarded to a Bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

***[delete either column "Maximum 10" or "Maximum 20"]***

| B-BBEE Status Level of Contributor | | Number of Points [Maximum 20] |
|---|---|---|
| 1 | | 20 |
| 2 | | 18 |
| 3 | | 16 |
| 4 | | 12 |
| 5 | | 8 |
| 6 | | 6 |
| 7 | | 4 |
| 8 | | 2 |
| Non-compliant contributor | | 0 |

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4.2 Bidders who qualify as EMEs in terms of the 2007 version of the Codes of Good Practice must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates.

4.3 Bidders who qualify as EMEs in terms of the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928 are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R10 million or less and the entity's Level of Black ownership.

4.4 In terms of the 2007 version of the Codes of Good Practice, Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

4.5 The Department of Trade and Industry recently revised the Codes of Good Practice on 11 October 2013 [Government Gazette No. 36928]. The Revised Codes will replace the Black Economic

Empowerment Codes of Good Practice issued on 9 February 2007. The Revised Codes provide for a transitional period ending 30 April 2015. During the transitional period, companies may elect to be measured in terms of the Revised Codes or the 2007 version of the Codes. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.

4.6 As such, Transnet will accept B-BBEE certificates issued based on the Revised Codes. Transnet will also continue to accept B-BBEE certificates issued in terms of the 2007 version of the Codes provided it was issued before 1 May 2015. Thereafter, Transnet will only accept B-BBEE certificates issued based on the Revised Codes.

4.7 In terms of the Revised Codes of Good Practice, Bidders who qualify as QSEs must comply with all the elements of B-BBEE for the purposes of measurement. QSEs that are at least 51% or 100% Black owned are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R50 million or less and the entity's Level of Black ownership. Large enterprises must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

4.8 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.

4.9 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

4.10 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

4.11 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.

4.12 A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

4.13 Bidders are to note that in terms of paragraph 2.6 of Statement 000 of the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928, any representation made by an entity about its B-BBEE compliance must be supported by suitable evidence or documentation. As such, Transnet reserves the right to request such evidence or documentation from Bidders in order to verify any B-BBEE recognition claimed.

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## 5. B-BBEE STATUS AND SUBCONTRACTING

5.1 **Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:**

B-BBEE Status Level of Contributor _____ = _____ [maximum of 20 points]

Note: Points claimed in respect of this paragraph 5.1 must be in accordance with the table reflected in paragraph 4.1 above and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit in the case of an EME or QSE.

5.2 **Subcontracting:**

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

(i) What percentage of the contract will be subcontracted? .....%

(ii) The name of the subcontractor .....

(iii) The B-BBEE status level of the subcontractor .....

(iv) Is the subcontractor an EME? YES/NO

5.3 Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm [TICK APPLICABLE BOX]

☐Partnership/Joint Venture/Consortium

☐One person business/sole propriety

☐Close Corporations

☐Company (Pty) Ltd

(v) Describe Principal Business Activities

.....

.....

(vi) Company Classification [TICK APPLICABLE BOX]

☐Manufacturer

☐Supplier

☐Professional Service Provider

☐Other Service Providers, e.g Transporter, etc

(vii) Total number of years the company/firm has been in business.....

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**BID DECLARATION**

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

(i) The information furnished is true and correct.

(ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.

(iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or

(e) forward the matter for criminal prosecution.

**WITNESSES:**

1. .....

2. .....

SIGNATURE OF BIDDER

DATE:.....

COMPANY NAME: .....

ADDRESS:.....

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TRANSNET

**GENERAL BID CONDITIONS - SERVICES**

**[March 2015]**

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## 1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;

1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;

1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;

1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;

1.5 **RFP** shall mean Request for Proposal;

1.6 **RFQ** shall mean Request for Quotation;

1.7 **RFX** shall mean RFP or RFQ, as the case may be;

1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;

1.9 **Service Provider** shall mean the successful Respondent;

1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and

1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

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## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMISSION OF BID DOCUMENTS

3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.

3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.

3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

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4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

## 5 BID FEES

5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.

5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

## 6 VALIDITY PERIOD

6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.

6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## 7 SITE VISIT / BRIEFING SESSION

Respondents may be requested to attend a site visit where it is considered necessary to view the site prior to the preparation of Bids, or where Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

## 8 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

## 9 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Chairperson or Secretary of the relevant Acquisition Council.

## 10 UNAUTHORISED COMMUNICATION ABOUT BIDS

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

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## 11 POST TENDER NEGOTIATIONS

Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet decide to conduct post tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).

## 12 RETURNABLE DOCUMENTS

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

## 13 DEFAULTS BY RESPONDENTS

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or

13.2 accept an order in terms of the Bid;

13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or

13.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

## 14 CURRENCY

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFX.

## 15 PRICES SUBJECT TO CONFIRMATION

15.1 Prices which are quoted subject to confirmation will not be considered.

15.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

## 16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

## 17 EXCHANGE AND REMITTANCE

17.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment

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overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

17.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

17.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.

17.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

17.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.

17.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

## 18 ACCEPTANCE OF BID

18.1 Transnet does not bind itself to accept the lowest priced or any Bid.

18.2 Transnet reserves the right to accept any Bid in whole or in part.

18.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

18.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

## 19 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

## 20 TERMS AND CONDITIONS OF CONTRACT

20.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

20.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.

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## 21 CONTRACT DOCUMENTS

21.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.

21.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

21.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall constitute a binding contract until the final contract is signed.

## 22 LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## 23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## 24 CONTRACTUAL SECURITIES

24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [**APG**] and/or a performance bond [**Performance Bond**], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.

24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.

24.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.

24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 24 will be for the account of the Service Provider.

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## 25 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## 26 VALUE-ADDED TAX

26.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

26.2 In respect of foreign Services rendered:

a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and

b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## 27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

27.1 **Method of Payment**

a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

b) However, in addition to the aforegoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1a) above. Failure to comply with clause 27.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 24 above *[Contractual Securities]*.

27.2 **Conditional Discount**

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.

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## 28 DELIVERY REQUIREMENTS

### 28.1 Period Contracts

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

### 28.2 Progress Reports

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

### 28.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

## 29 SPECIFICATIONS AND COPYRIGHT

### 29.1 Specifications

The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

### 29.2 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the *Intellectual Property Rights* section in the Terms and Conditions of Contract.

## 30 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

30.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

30.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

30.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

30.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

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a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.

30.5 If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [**EFT**]:

a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

## 31 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

## 32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by reference. Below follows a condensed summary of this blacklisting procedure.

32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "prima facie" (i.e. on the face of it) case has been established.

32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

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b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

f) has made any incorrect statement in a certificate or other communication with regard to the Service or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(i) he made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;

g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

h) has litigated against Transnet in bad faith.

32.6 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

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32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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## ANNEXURE 2

## OCCUPATIONAL HEALTH AND SAFETY ACT, 1993
## (Regulation 4 of the Construction Regulations, 2014)

## NOTIFICATION OF CONSTRUCTION WORK

1.(a) Name and postal address of principal contractor:

_____

(b) Name and tel. no of principal contractor's contact person:

_____

2. Principal contractor's compensation registration number:

_____

3.(a) Name and postal address of client:

_____

(b) Name and tel. no of client's contact person or agent:

_____

4.(a) Name and postal address of designer(s) for the project:

_____

(b) Name and tel. no of designer(s) contact person:

_____

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 8(1).

_____

6. Name/s of principal contractor's sub-ordinate supervisors on site appointed in terms of regulation 8(2).

_____

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7. Exact physical address of the construction site or site office:

_____

8. Nature of the construction work:

_____

_____

_____

9. Expected commencement date: _____

10. Expected completion date: _____

11. Estimated maximum number of persons on the construction site.

Total: _____ Male: _____ Female: _____

12. Planned number of contractors on the construction site accountable to principal contractor: _____

13. Name(s) of contractors already selected

_____

_____

_____

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_____ _____

Principal Contractor Date

_____ _____

Client's Agent (where applicable) Date

_____ _____

Client Date

- THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.

Construction Regulation 2014

E7/1 (July 1998)

# SPECIFICATION FOR WORKS ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND NEAR HIGH VOLTAGE EQUIPMENT

(This Specification shall be used in Transnet Contracts)

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## 1 DEFINITIONS

The following definitions shall apply :

Authorised Person. A person whether an employee of Transnet or not, who has been specially authorised to undertake specific duties in terms of Transnet's publication SAFETY INSTRUCTIONS: HIGH-VOLTAGE ELECTRICAL EQUIPMENT, and who holds a certificate or letter of authority to that effect.

Barrier. Any device designed to restrict access to "live" high-voltage electrical equipment.

Bond. A short conductor installed to provide electrical continuity.

Contractor. Any person or organisation appointed by Transnet to carry out work on its behalf.

Dead. Isolated and earthed.

Electrical Officer (Contracts). The person appointed in writing by the responsible Electrical Engineer in Transnet as the person who shall be consulted by the Contractor in all electrical matters to ensure that adequate safety precautions are taken by the Contractor.

Executive Officer. The person appointed by Transnet from time to time as the Executive Officer to act according to the rights and powers held by and obligations placed upon him in terms of the Contract.

High-Voltage. A voltage normally exceeding 1 000 volts.

Live. A conductor is said to be "live" when it is at a potential different from that of the earth or any other conductor of the system of which it forms a part.

Near. To be in such a position that a person's body or the tools he is using or any equipment he is handling may come within 3 metres of live exposed high-voltage electrical equipment.

Occupation. An authorisation granted by Transnet for work to be carried out under specified conditions on, over under or adjacent to railway lines.

Occupation Between Trains. An occupation during an interval between successive trains.

Project Manager. The person or juristic person appointed by Transnet from time to time as the Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

Responsible Representative. The responsible person in charge, appointed by a contractor, who has undergone specific training (and holds a certificate) to supervise staff under his control to work on, over, under or adjacent to railway lines and in the vicinity of high-voltage electrical equipment.

Technical Officer. The person or juristic person appointed by Transnet from time to time as the Technical Officer, to administer the Contractor's performance and execution of the Works according to the powers and rights held by and obligations placed upon the Technical Officer in terms of the Contract.

Total Occupation. An occupation for a period when trains are not to traverse the section of line covered by the occupation.

Work on. Work undertaken on or so close to the equipment that the specified working clearances to the live equipment cannot be maintained.

Work Permit. A combined written application and authority to proceed with work on or near dead electrical equipment.

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## PART A - GENERAL SPECIFICATION

### 2. AUTHORITY OF OFFICERS OF TRANSNET

2.1 The Contractor shall co-operate with the officers of Transnet and shall comply with all instructions issued and restrictions imposed with respect to the Works which bear on the existence and operation of Transnet's railway lines and high-voltage equipment.

2.2 Without limiting the generality of the provisions of 2.1, any duly authorised representative of Transnet, having identified himself, may stop the work if, in his opinion, the safe passage of trains or the safety of Transnet assets or any person is affected. **CONSIDERATIONS OF SAFETY SHALL TAKE PRECEDENCE OVER ALL OTHER CONSIDERATIONS.**

### 3. CONTRACTOR'S REPRESENTATIVES

3.1 The Contractor shall nominate Responsible Representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the Technical Officer with the names, addresses and telephone numbers of the representatives.

3.2 The Contractor guarantees that he has satisfied himself that the Responsible Representative is fully conversant with this specification and that he shall comply with all his obligations in respect thereof.

### 4. OCCUPATIONS AND WORK PERMITS

4.1 Work to be done during total occupation or during an occupation between trains or under a work permit shall be done in a manner decided by the Technical Officer and at times to suit Transnet requirements.

4.2 The Contractor shall organise the Works in a manner, which will minimise the number and duration of occupations and work permits required.

4.3 Transnet will not be liable for any financial or other loss suffered by the Contractor arising from his failure to complete any work scheduled during the period of an occupation or work permit.

4.4 The Contractor shall submit to the Technical Officer, in writing, requests for occupations or work permits together with details of the work to be undertaken, at least 14 days before they are required. Transnet does not undertake to grant an occupation or work permit for any particular date, time or duration.

4.5 Transnet reserves the right to cancel any occupation or work permit at any time before or during the period of occupation or work permit. If, due to cancellation or change in date or time, the Contractor is not permitted to start work under conditions of total occupation or work permit at the time arranged, all costs caused by the cancellation shall be born by the Contractor except as provided for in clauses 4.6 to 4.8.

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4.6 When the Contractor is notified less than 2 hours before the scheduled starting time that the occupation or work permit is cancelled, he may claim reimbursement of his direct financial losses caused by the loss of working time up to the time his labour and plant are employed on other work, but not exceeding the period of the cancelled occupation or work permit.

4.7 When the Contractor is notified less than 2 hours before the schedule starting time, or during an occupation or work permit, that the duration of the occupation or work permit is reduced, he may claim reimbursement of his direct financial losses caused by the loss of working time due to the reduced duration of the occupation or work permit.

4.8 Reimbursement the Contractor for any loss of working time in terms of 4.6 and 4.7, shall be subject to his claims being submitted within 14 days of the event with full details of labour and plant involved, and provided that the Technical Officer certifies that no other work on which the labour and plant could be employed was immediately available.

4.9 Before starting any work for which an occupation has been arranged, the Contractor shall obtain from the Technical Officer written confirmation of the date, time and duration of the occupation.

4.10 Before starting any work for which a work permit has been arranged, the Responsible Representative shall read and sign portion C of form No. T.1276 signifying that he is aware of the limits within which work may be undertaken. After the work for which the permit was granted has been completed, or when the work permit is due to be terminated, or if the permit is cancelled after the start, the same person who signed portion C shall sign portion D of the T.1276 form, thereby acknowledging that he is aware that the electrical equipment is to be made "live". The Contractor shall advise all his workmen accordingly.

## 5. SPEED RESTRICTIONS AND PROTECTION

5.1 When speed restrictions are imposed by Transnet because of the Contractor's activities, the Contractor shall organise and carry out his work so as to permit the removal of the restrictions as soon as possible.

5.2 When the Technical Officer considers protection to be necessary the Contractor shall, unless otherwise agreed, provide all protection including flagmen, other personnel and all equipment for the protection of Transnet's and the Contractor's personnel and assets, the public and including trains. Transnet will provide training free of charge of the Contractor's flagmen and other personnel performing protection duties. The Contractor shall consult with the Technical Officer, whenever he considers that protection will be necessary, taking into account the minimum permissible clearances set out in appendixes 1 to 4.

5.3 The Contractor shall appoint a Responsible Representative to receive and transmit any instruction, which may be given by Transnet personnel providing protection.

## 6. ROADS ON TRANSNET PROPERTY

The provision of clause 25 of the E.5, General Conditions of Contract, or clause 23 of the E.5 (MW), General Conditions of Contract for Maintenance Works, shall apply to the use of existing roads on Transnet's property.

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7. **CLEARANCES**

7.1 No temporary works shall encroach on the appropriate minimum clearances set out in Annexure 1 BE97-01 Sheets 1,2, 3 and 5 of 5.

8. **STACKING OF MATERIAL**

8.1 The Contractor shall not stack any material closer than 3 m from the centre line of any railway line without prior approval of the Technical Officer.

9. **EXCAVATION, SHORING, DEWATERING AND DRAINAGE**

9.1 Unless otherwise approved by the Technical Officer, any excavation adjacent to a railway line shall not encroach on the hatched area shown in Figure 1.

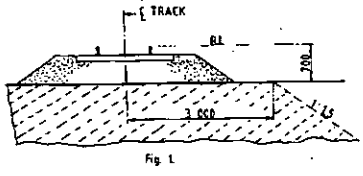

Fig. 1

9.2 The Contractor shall provide at his own cost any shoring, dewatering or drainage of any excavation unless otherwise stipulated elsewhere in the Contract.

9.3 Where required by the Technical Officer, drawings of shoring for any excavation under or adjacent to a railway line shall be submitted and permission to proceed obtained, before the excavation is commenced.

9.4 The Contractor shall prevent ingress of water to the excavation but where water does enter, he shall dispose of it as directed by the Technical Officer.

9.5 The Contractor shall not block, obstruct or damage any existing drains either above or below ground level unless he has made adequate prior arrangements to deal with drainage.

10. **FALSEWORK FOR STRUCTURES**

10.1 Drawings of falsework for the construction of any structure over, under or adjacent to any railway line shall be submitted to the Technical Officer and his permission to proceed obtained before the falsework is erected. Each drawing shall be given a title and a distinguishing number and shall be signed by a registered professional engineer certifying that he has checked the design of the falsework and that the drawings are correct and in accordance with the design.

10.2 After the falsework has been erected and before any load is applied, the Contractor shall submit to the Technical Officer a certificate signed by a registered professional engineer certifying that he has checked the falsework and that it has been erected in accordance with the drawings. Titles and numbers of the drawings shall be stated in the certificate. Notwithstanding permission given by the Technical Officer to proceed, the Contractor shall be entirely responsible for the safety and adequacy of the falsework.

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11. **PILING**

11.1 The Technical Officer will specify the conditions under which piles may be installed on Transnet property.

12. **UNDERGROUND SERVICES**

12.1 No pegs or stakes shall be driven or any excavation made before the Contractor has established that there are no underground services, which may be damaged thereby.

12.2 Any damage shall be reported immediately to the Technical Officer, or to the official in charge at the nearest station, or to the traffic controller in the case of centralised traffic control.

13. **BLASTING**

13.1 The provisions of clause 23 of the E.5, General Conditions of Contract or clause 21 of the E.5 (MW), General Conditions of Contract for Maintenance Work, shall apply to all blasting operations undertaken in terms of the Contract.

13.2 The Contractor shall provide proof that he has complied with the provisions of clauses 10.17.1 to 10.17.4 of the Explosives Regulations (Act 26 of 1956 as amended).

13.3 Blasting within 500m of a railway line will only be permitted during intervals between trains. A person appointed by the Technical Officer, assisted by flagmen with the necessary protective equipment, will be in communication with the controlling railway station.
Only this person will be authorised to give the Contractor permission to blast, and the Contractor shall obey his instructions implicitly regarding the time during which blasting may take place.

13.4 The flagmen described in 13.3, where provided by Transnet, are for the protection of trains and Transnet property only, and their presence does not relieve the Contractor in any manner of his responsibilities in terms of Explosives Act or Regulations, or any obligation in terms of this Contract.

13.5 The person described in 13.3 will record in a book provided and retained by Transnet the dates and times -

(i) when each request is made by him to the controlling station for permission to blast;

(ii) when blasting may take place;

(iii) when blasting actually takes place; and

(iv) when he advises the controlling station that the line is safe for the passage of trains.

13.6 Before each blast the Contractor shall record in the same book, the details of the blast to be carried out. The person appointed by the Technical Officer and the person who will do the blasting shall both sign the book whenever an entry described in 13.5 is made.

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13.7 The terms of clause 27 hereof shall be strictly adhered to.

## 14. RAIL TROLLEYS

14.1 The use of rail trolleys or trestle trolleys on a railway line for working on high voltage equipment will be permitted only if approved by the Technical Officer and under the conditions stipulated by him.

14.2 All costs in connection with such trolley working requested by the Contractor shall, unless otherwise agreed, be borne by the Contractor, excluding the costs of any train protection services normally provided free of charge by Transnet.

## 15. SIGNAL TRACK CIRCUITS

15.1 Where signal track circuits are installed, the Contractor shall ensure that no material capable of conducting an electrical current makes contact between rails of a railway line/lines.

15.2 No signal connections on track-circuited tracks shall be severed without the Technical Officer's knowledge and consent.

## 16. PENALTY FOR DELAYS TO TRAINS

16.1 If any trains are delayed by the Contractor and the Technical Officer is satisfied that the delay was avoidable, a penalty will be imposed on the Contractor of R5 000 per hour or part thereof for the period of delay, irrespective of the number of trains delayed.

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## PART B - ADDITIONAL SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE ELECTRICAL EQUIPMENT

### 17. GENERAL

17.1 This specification is based on the contents of Transnet's publication SAFETY INSTRUCTIONS, HIGH-VOLTAGE ELECTRICAL EQUIPMENT, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract. These instructions apply to all work near live high-voltage equipment maintained and/or operated by Transnet, and the onus rests on the Contractor to ensure that he obtains a copy.

17.2 The Contractor's attention is drawn in particular to the contents of Part I, Sections 1 and 2 of the Safety Instructions : High-Voltage Electrical Equipment.

17.3 The Safety Instructions : High-Voltage Electrical Equipment cover the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be ordered by and at the discretion of the Electrical Officer (Contracts).

17.4 This specification must be read in conjunction with and not in lieu of the Safety Instructions : High-Voltage Electrical Equipment.

17.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any live high-voltage equipment.

17.6 The Contractor shall regard all high-voltage equipment as live unless a work permit is in force.

17.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall, unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of Transnet staff where this is necessary.

17.8 No barrier shall be removed unless authorised by the Electrical Officer (Contracts).

### 18. WORK ON BUILDINGS OR FIXED STRUCTURES

Before any work is carried out or measurements are taken on any part of a building, fixed structure or earthworks of any kind above ground level situated within 3 metres of live high-voltage equipment, the Electrical Officer (Contracts) shall be consulted to ascertain the conditions under which the work may be carried out.

18.2 No barrier erected to comply with the requirements of the Electrical Officer (Contracts) shall be used as temporary staging or shuttering for any part of the Works.

18.3 The shuttering for bridge piers, abutments, retaining walls or parapets adjacent to or over any

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track may be permitted to serve as a barrier, provided that it extends at least 2,5 metres above any working level in the case of piers, abutments and retaining walls and 1,5 metres above any working level in the case of parapets.

19. **WORK DONE ON OR OUTSIDE OF ROLLING STOCK, INCLUDING LOADING OR UNLOADING**

19.1 No person shall stand, climb or work whilst on any platform, surface or foothold higher than the normal unrestricted places of access, namely -

(i) the floor level of trucks;

(ii) external walkways on diesel, steam and electric locomotives, steam heat vans, etc. and

(iii) walkways between coaches and locomotives.

When in these positions, no person may raise his hands or any equipment or material he is handling above his head.

19.2 In cases where the Contractor operates his own rail mounted equipment, he shall arrange for the walkways on this plant to be inspected by the Electrical Officer (Contracts) and approved, before commencement of work.

19.3 The handling of long lengths of material such as metal pipes, reinforcing bars, etc should be avoided, but if essential they shall be handled as nearly as possible in a horizontal position below head height.

19.4 The Responsible Representative shall warn all persons under his control of the danger of being near live high-voltage equipment, and shall ensure that the warning is fully understood.

19.5 Where the conditions in 19.1 to 19.3 cannot be observed the Electrical Officer (Contracts), shall be notified. He will arrange for suitable Safety measures to be taken. The Electrical Officer (Contracts), may in his discretion and in appropriate circumstances, arrange for a suitable employee of the Contractor to be specially trained by Transnet and at its costs, as an Authorised Person to work closer than 3 metres from live overhead conductors and under such conditions as may be imposed by the Senior responsible Electrical Engineer in Transnet.

20. **USE OF EQUIPMENT**

20.1 Measuring Tapes and Devices

20.1.1 Measuring tapes may be used near live high-voltage equipment provided that no part of any tape or a person's body comes within 3 metres of the live equipment.

20.1.2 In windy conditions the distance shall be increased to ensure that if the tape should fall it will not be blown nearer than 3 metres from the live high-voltage equipment.

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20.1.3 Special measuring devices longer than 2 metres such as survey staves and rods may be used if these are of non-conducting material and approved by the responsible Electrical Engineer in Transnet, but these devices must not be used within 3 metres of live high-voltage equipment in rainy or wet conditions.

20.1.4 The assistance of the Electrical Officer (Contracts) shall be requested when measurements within the limits defined in 20.1.1 to 20.1.3 are required.

20.1.5 The restrictions described in 20.1.1 to 20.1.3 do not apply on a bridge deck between permanent parapets nor in other situations where a barrier effectively prevents contact with the live high-voltage equipment.

20.2 Portable Ladders

20.2.1 Any type of portable ladder longer then 2 metres may only be used near live high-voltage equipment under the direct supervision of the Responsible Representative. He shall ensure that the ladder is always used in such a manner that the distance from the base of the ladder to any live high-voltage equipment is greater than the fully extended length of the ladder plus 3 metres. Where these conditions cannot be observed, the Electrical Officer (Contracts) shall be advised, and he will arrange for suitable safety measures to be taken.

21. **CARRYING AND HANDLING MATERIAL AND EQUIPMENT**

21.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material, which exceeds 2 metres in length, shall be carried completely below head height near live high-voltage equipment. For maximum safety two or more persons so as to maintain it as nearly as possible in a horizontal position should carry such material. The utmost care must be take to ensure that no part of the material comes within 3 metres of any live high-voltage equipment.

21.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any live high-voltage equipment unless the Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.

21.3 The presence of overhead power lines shall always be taken account of especially when communications lines or cables or aerial cables, stay wires, etc. are being erected above ground level.

22. **PRECAUTIONS TO BE TAKEN WHEN ERECTING OR REMOVING POLES, ANTENNAE, TREES ETC.**

22.1 A pole may be handled for the purpose of erection or removal near high-voltage equipment under the following conditions:

(i) If the distance between the point at which the pole is to be erected or removed and the nearest live high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.

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(ii) If the distance described in (i) is less than the length of the pole plus 3 metres, the Electrical Officer (Contracts) shall be consulted to arrange for an Authorised Person to supervise the work and to ensure that the pole is earthed where possible. The pole shall be kept in contact with the point of erection, and adequate precautions shall be taken to prevent contact with live high-voltage equipment.

22.2 The cost of supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

22.3 The provisions of clauses 22.1 and 22.2 shall also apply to the erection or removal of columns, antennae, trees, posts, etc.

## 23. USE OF WATER

23.1 No water shall be used in the form of a jet if it can make contact with any live high-voltage equipment or with any person working on such equipment.

## 24. USE OF CONSTRUCTION PLANT

24.1 "Construction plant" entails all types of plant including cranes, piling frames, boring machines, excavators, draglines, dewatering equipment and road vehicles with or without lifting equipment.

24.2 When work is being undertaken in such a position that it is possible for construction plant or its load to come within 3 metres of live high-voltage equipment, the Electrical Officer (Contracts) shall be consulted. He will arrange for an Authorised Person to supervise the work and to ensure that the plant is adequately earthed. The Electrical Officer (Contracts) will decide whether further safety measures are necessary.

24.3 The cost of any supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

24.4 When loads are handled by cranes, non-metallic rope hand lines shall be used, affixed to such loads so as to prevent their swinging and coming within 3 metres of live high-voltage equipment.

24.5 Clauses 24.1 to 24.4 shall apply mutatis mutandis to the use of maintenance machines of any nature.

## 25. WORK PERFORMED UNDER DEAD CONDITIONS UNDER COVER OF A WORK PERMIT

25.1 If the Responsible Representative finds that the work cannot be done in safety with the high-voltage electrical equipment live, he shall consult the Electrical Officer (Contracts) who will decide on the action to be taken.

25.2 If a work permit is issued the Responsible Representative shall -

(i) before commencement of work ensure that the limits within which work may be carried out

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have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.

(ii) sign portion C of the permit before commencement of work;

(iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;

(iv) care for the safety of all persons under his control whilst work is in progress; and

(v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

26. **TRACTION RETURN CIRCUITS IN RAILS**

26.1 DANGEROUS CONDITIONS CAN BE CREATED BY REMOVING OR SEVERING ANY BOND.

26.2 Broken rails with an air gap between the ends, and joints, at which fishplates are removed under "broken bond" conditions, are potentially lethal. The rails on either side of an air gap between rail ends on electrified lines shall not be touched simultaneously until rendered safe by Transnet personnel.

26.3 The Contractor shall not break any permanent bonds between rails or between rails and any structure. He shall give the Technical Officer at least 7 days written notice when removal of such bonds is necessary.

26.4 No work on the track which involves interference with the traction return rail circuit either by cutting or removing the rails, or by removal of bonds shall be done unless the Electrical Officer (Contracts) is consulted. He will take such precautions as may be necessary to ensure continuity of the return circuit before permitting the work to be commenced.

27. **BLASTING**

27.1 The Contractor shall obtain the permission of the Electrical Officer (Contracts) before blasting, and shall give at least 14 days notice of his intention to blast.

27.2 No blasting shall be done in the vicinity of electrified lines unless a member of Transnet's electrical personnel is present.

27.3 The terms of clause 13 hereof shall be strictly adhered to.

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28. **HIGH-VOLTAGE ELECTRICAL EQUIPMENT NOT MAINTAINED AND/OR OPERATED BY TRANSNET**

Where the work is undertaken on or near high-voltage electrical equipment which is not maintained and/or operated by Transnet, the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, or the Mines Health and Safety Act (Act 29 of 1996), shall apply.
Such equipment includes: -

(i) Eskom and municipal equipment;

(ii) the Contractor's own power supplies; and

(iii) electrical equipment being installed but not yet taken over from the Contractor.

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# HORIZONTAL CLEARANCES : 1 065mm TRACK GAUGE



| RADIUS (m) | WITH CANT | | NO CANT | WITH CANT | |
|---|---|---|---|---|---|
| | H (mm) | L (mm) | H & L | B (mm) | C (mm) |
| 90 | 2 730 | 3 090 | 2 780 | 1 130 | 2 100 |
| 100 | 2 700 | 3 030 | 2 750 | 1 140 | 2 050 |
| 120 | 2 650 | 2 970 | 2 700 | 1 160 | 2 010 |
| 140 | 2 620 | 2 920 | 2 660 | 1 175 | 1 990 |
| 170 | 2 590 | 2 870 | 2 630 | 1 190 | 1 970 |
| 200 | 2 570 | 2 820 | 2 600 | 1 205 | 1 950 |
| 250 | 2 550 | 2 790 | 2 580 | 1 230 | 1 930 |
| 300 | 2 540 | 2 760 | 2 560 | 1 250 | 1 900 |
| 350 | 2 530 | 2 730 | 2 540 | 1 270 | 1 890 |
| 400 | 2 520 | 2 710 | 2 530 | 1 290 | 1 875 |
| 500 | 2 510 | 2 680 | 2 520 | 1 320 | 1 850 |
| 600 | 2 500 | 2 660 | 2 510 | 1 340 | 1 830 |
| 800 | 2 490 | 2 620 | 2 500 | 1 365 | 1 790 |
| 1 000 | 2 480 | 2 600 | 2 490 | 1 380 | 1 760 |
| 1 200 | 2 480 | 2 580 | 2 490 | 1 390 | 1 730 |
| 1 500 | 2 480 | 2 550 | 2 480 | 1 415 | 1 700 |
| 2 000 | 2 480 | 2 500 | 2 480 | 1 440 | 1 660 |
| 3 000 | 2 470 | 2 470 | 2 470 | 1 500 | 1 600 |
| >5 000 | 2 460 | 2 460 | 2 460 | 1 600 | 1 600 |




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REMARKS:

1. H AND B IS THE REQUIRED HORIZONTAL CLEARANCE ON THE OUTSIDE OF THE CURVE BASED ON MINIMUM CANT.
2. L AND C IS THE REQUIRED HORIZONTAL CLEARANCE ON THE INSIDE OF THE CURVE BASED ON MAXIMUM CANT.
3. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
4. FOR WORKSHOP AREAS AND TEMPORARY WORK, CLEARANCES H AND L MAY BE REDUCED BY 300mm.
5. ⊕ SEE ANNEXURE 1 SHEET 3 FOR PLATFORM CLEARANCES.
6. ALSO REFER TO REMARKS 4 TO 8 OF ANNEXURE 1 SHEET 2.

# VERTICAL CLEARANCES : 1 065mm TRACK GAUGE



| LOCATION | | NOT ELECTRIFIED | ELECTRIFIED (PRESENT OR FUTURE) | |
|---|---|---|---|---|
| | | | 3kV & 25kV | 50kV |
| | RADIUS (mm) | S (mm) | V (mm) | V (mm) |
| ALL AREAS OTHER THAN THOSE INDICATED BY * BELOW | 100 | 4 470 | 5 050 | 5 400 |
| | 300 | 4 410 | 5 020 | 5 370 |
| | 600 | 4 370 | 5 000 | 5 350 |
| | 1 000 | 4 350 | 4 990 | 5 340 |
| | 1 500 | 4 310 | 4 960 | 5 310 |
| | 2 000 | 4 290 | 4 940 | 5 290 |
| | >3 000 | 4 270 | 4 930 | 5 280 |
| * OVER OR NEAR POINTS AND CROSSING IF REQUIRED BY ELECTRICAL IRRESPECTIVE OF RADIUS | | | 5 850 | 6 000 |




REMARKS:

1. V IS THE REQUIRED VERTICAL CLEARANCE EXCEPT WHERE REDUCED CLEARANCE S APPLIES.
2. S IS THE MINIMUM VERTICAL CLEARANCE FOR STRUCTURES AND TEMPORARY WORK OVER NON-ELECTRIFIED LINES.
3. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
4. FOR APPLICATION AT CURVES
   - 4.1 APPLY INCREASED CLEARANCES FOR CURVES TO POINTS 3m BEYOND THE ENDS OF THE CIRCULAR CURVE.
   - 4.2 REDUCE CLEARANCES AT A UNIFORM RATE OVER THE REMAINDER OF THE TRANSITION CURVE.
   - 4.3 FOR NON-TRANSITIONED CURVES REDUCE AT A UNIFORM RATE OVER A LENGTH OF 15m ALONG STRAIGHTS.
5. NEW STRUCTURES: SEE BRIDGE CODE.
6. TUNNELS: SEE DRAWING BE 82-35.
7. FOULING POINTS: SEE CLAUSE 8.1.
8. CLEARANCES ARE BASED ON 15m BOGIE CENTRES AND 21,2m VECHILE BODY LENGTH.
9. ◐ SEE ANNEXURE 1 SHEET 3 FOR PLATFORM CLEARANCES.

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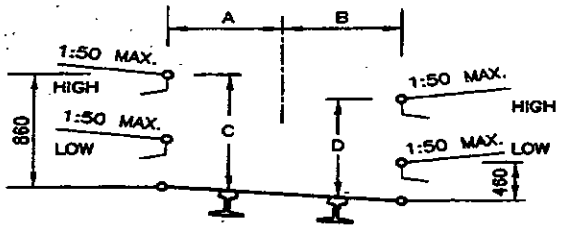
ANNEXURE 1
SHEET 3 of 5
AMENDMENT

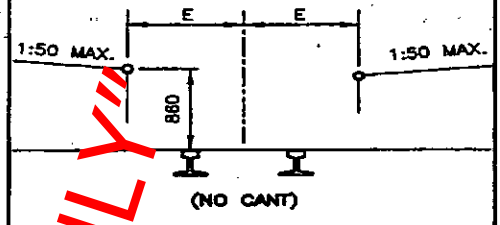
# CLEARANCES : PLATFORMS

## PLATFORMS : TRACK GAUGE 1 065mm

### PASSENGERS




### GOODS



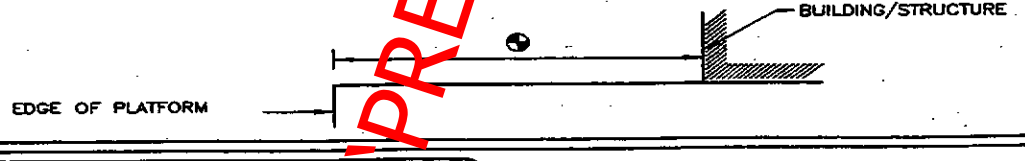

(NO CANT)

| RADIUS (m) | A (mm) | B (mm) | C (mm) | D (mm) | E (mm) |
|---|---|---|---|---|---|
| 90 | 1 690 | 1 820 | 890 | 810 | 1 [illegible] |
| 100 | 1 650 | 1 790 | 890 | 810 | 1 [illegible] |
| 120 | 1 610 | 1 740 | 890 | 810 | 1 760 |
| 140 | 1 580 | 1 700 | 890 | 810 | 1 720 |
| 170 | 1 550 | 1 660 | 890 | 810 | 1 690 |
| 200 | 1 530 | 1 630 | 890 | 820 | 1 670 |
| 250 | 1 520 | 1 600 | 890 | 820 | 1 640 |
| 300 | 1 520 | 1 580 | 890 | 830 | 1 620 |
| 350 | 1 520 | 1 560 | 880 | 830 | 1 600 |
| 400 | 1 520 | 1 550 | 880 | 840 | 1 590 |
| 500 | 1 520 | 1 540 | 880 | 850 | 1 580 |
| 600 | 1 520 | 1 530 | 870 | 850 | 1 570 |
| 800 | 1 520 | 1 520 | 860 | 860 | 1 560 |
| 1 200 | 1 520 | 1 520 | 860 | 860 | 1 550 |
| 2 000 | 1 520 | 1 520 | 860 | 860 | 1 540 |
| 3 000 | 1 520 | 1 520 | 860 | 860 | 1 530 |
| STRAIGHT | 1 520 | 1 520 | 860 | 860 | 1 520 |

**REMARKS:**

1. NO CANT TO BE APPLIED EXCEPT WHEN THE GOODS PLATFORM IS ON A RUNNING LINE.
2. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
3. ⊕ 8m TO MAIN STATION—BUILDINGS AND 3m TO ALL OTHER STRUCTURES.
4. TOLERANCES : SEE CLAUSE 8.0.10.

## STRUCTURES ON PLATFORMS : 1 065mm AND 610mm TRACK GAUGE

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# CLEARANCES : 610mm TRACK GAUGE

| RADIUS (m) | WITH CANT H (mm) | WITH CANT L (mm) | NO CANT H & L (mm) | V (mm) |
|---|---|---|---|---|
| 50 | 2 370 | 2 490 | 2 400 | 4 320 |
| 70 | 2 310 | 2 420 | 2 330 | 4 310 |
| 100 | 2 260 | 2 370 | 2 280 | 4 310 |
| 140 | 2 220 | 2 340 | 2 250 | 4 310 |
| 200 | 2 200 | 2 300 | 2 220 | 4 300 |
| 300 | 2 190 | 2 270 | 2 200 | 4 300 |
| 500 | 2 180 | 2 230 | 2 190 | 4 290 |
| 700 | 2 170 | 2 200 | 2 180 | 4 270 |
| 1 000 | 2 170 | 2 170 | 2 170 | 4 270 |
| >2 000 | 2 160 | 2 160 | 2 160 | 4 270 |




CLEARANCES




(NO CANT) PLATFORMS

| RADIUS (m) | F (mm) |
|---|---|
| 50 | 1 550 |
| 60 | 1 510 |
| 80 | 1 460 |
| 100 | 1 430 |
| 120 | 1 410 |
| 140 | 1 390 |
| 170 | 1 380 |
| 200 | 1 370 |
| 250 | 1 360 |
| 300 | 1 350 |
| 600 | 1 330 |
| 1 000 | 1 320 |
| >2 000 | 1 320 |
| STRAIGHT | 1 310 |

REMARKS:

1. H IS THE MINIMUM HORIZONTAL CLEARANCE ON THE OUTSIDE OF THE CURVE BASED ON MINIMUM CANT.
2. L IS THE MINIMUM HORIZONTAL CLEARANCE ON THE INSIDE OF THE CURVE BASED ON MAXIMUM CANT.
3. V IS THE MINIMUM VERTICAL CLEARANCE.
4. FOR APPLICATION AT CURVES:
   - 4.1 APPLY INCREASED CLEARANCES FOR CURVES TO POINTS 2m BEYOND THE ENDS OF THE CIRCULAR CURVE.
   - 4.2 REDUCE CLEARANCES AT A UNIFORM RATE OVER THE REMAINDER OF THE TRANSITION CURVE.
   - 4.3 FOR NON-TRANSITIONED CURVES REDUCE AT A UNIFORM RATE OVER A LENGTH OF 18m ALONG STRAIGHTS.
5. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
6. ALSO REFER TO REMARKS 5, 6 AND 7 OF ANNEXURE 1 SHEET 2.
7. CLEARANCES ARE BASED ON 9 700mm BOGIE CENTRES AND 13 700mm VEHICLE BODY LENGTH.
8. SEE ANNEXURE 1 SHEET 3 FOR STRUCTURES ON PLATFORMS.

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**TRANSNET SOC LIMITED**

(Registration no. 1990/000900//30)

# SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993) AND APPLICABLE REGULATIONS

## 1. General

1.1 The Contractor and Transnet Limited (hereinafter referred to as "Transnet") are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.

1.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the contract work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Contract.

1.3 The Contractor accepts his obligation to complying fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.

1.4 Transnet accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.

1.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

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## 2. Definitions

2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -

2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be **"Construction Work"**, which, in terms of the Construction Regulations, 2003 means any work in connection with: -

(a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;

(b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;

(c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or

(d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;

2.3 **"competent person"** in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed: Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;

2.4 **"contractor"** means principal contractor and "subcontractor" means contractor as defined by the Construction Regulations, 2003.

2.5 **"fall protection plan"** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;

2.6 **"health and safety file"** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;

2.7 **"Health and Safety Plan "** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;

2.8 **"Risk Assessment"** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;

2.9 **"the Act"** means the Occupational Health and Safety Act No. 85 of 1993.

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## 3. Procedural Compliance

3.1 The Contractor who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-

(a) includes the demolition of a structure exceeding a height of 3 metres; or

(b) includes the use of explosives to perform construction work; or

(c) includes the dismantling of fixed plant at a height greater than 3m,

and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-

(a) includes excavation work deeper than 1m; or

(b) includes working at a height greater than 3 metres above ground or a landing.

3.2 The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Contractor shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Technical Officer or employee.

3.3 The Contractor shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.

3.4 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the Technical Officer.

3.5 In the case of a self-employed Contractor or any subcontractor who has the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Contractor shall in such a case execute and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.

3.6 The Contractor shall, before commencing any work, obtain from the Technical Officer an access certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.

3.7 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Transnet's safety requirements and procedures.

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## 4. Special Permits

Where special permits are required before work may be carried out such as for hotwork, isolation permits, work permits and occupations, the Contractor shall apply to the Technical Officer or the relevant authority for such permits to be issued. The Contractor shall strictly comply with the conditions and requirements pertaining to the issue of such permits.

## 5. Health and Safety Programme

5.1 The Tenderer shall, with his tender, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the Act and Regulations and particularly in respect of: -

(i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;

(ii) the execution of the contract work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;

(iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.

5.2 The Contractor's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.

5.3 The Contractor shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:

*(a)* The identification of the risks and hazards that persons may be exposed to;

*(b)* the analysis and evaluation of the hazards identified;

*(c)* a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;

*(d)* a monitoring and review plan.

5.4 The Health and Safety Plan shall include full particulars in respect of: -

(a) The safety management structure to be instituted on site or place of work and the names of the Contractor's health and safety representatives and members of safety committees where applicable;

*(b)* the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;

(c) the safety equipment, devices and clothing to be made available by the Contractor to his employees;

(d) the site access control measures pertaining to health and safety to be implemented;

(e) the arrangements in respect of communication of health and safety related matters and incidents between the Contractor, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Contract forming part of the Contract and

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(f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Contract.

5.4 The Health and Safety programme shall be subject to the Technical Officer's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothes be issued which, in the Technical Officer's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act and Regulations. The Technical Officer or his deputy shall be allowed to attend meetings of the Contractor's safety committee as an observer.

5.5 The Contractor shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.

5.6 The Contractor shall stop any subcontractor from executing any construction work, which is not in accordance with the Contractor's, and/or subcontractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.

5.7 The Contractor shall ensure that a copy of the Health and Safety Plan is available on site for inspection by an inspector, Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

5.8 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.

5.9 The Contractor shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment.

5.10 The Contractor shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.

5.11 The Contractor shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

## 6. Fall Protection Plan

6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;

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6.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of Contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.

6.3 The fall protection plan shall include:-

*(a)* A Risk Assessment of all work carried out from an elevated position;

*(b)* the procedures and methods to address all the identified risks per location;

*(c)* the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;

*(d)* the training of employees working from elevated positions; and

*(e)* the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

## 7. Hazards and Potential Hazardous Situations

The Contractor and the Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the Contract by the Contractor or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the contract work.

## 8. Health and Safety File

8.1 The Contractor shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.

8.2 The Contractor shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, contractor or the Technical Officer.

8.3 The Contractor shall hand over a consolidated health and safety file to the Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.

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# ANNEXURE 1

## OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

**Regulation 3(1) of the Construction Regulations**

**NOTIFICATION OF CONSTRUCTION WORK**

1(a) Name and postal address of principal contractor:

_____

(b) Name and tel. no of principal contractor's contact person:

_____

2. Principal contractor's compensation registration number: _____

3.(a) Name and postal address of client:

_____

(b) Name and tel no of client's contact person or agent:

_____

4.(a) Name and postal address of designer(s) for the project:

_____

(b) Name and tel. no of designer(s) contact person:

_____

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 6(1).

_____

6. Name/s of principal contractor's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2).

_____

7. Exact physical address of the construction site or site office:

_____

8. Nature of the construction work:

_____

_____

_____

_____

_____

9. Expected commencement date: _____

10. Expected completion date: _____

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11. Estimated maximum number of persons on the construction site: _____

12. Planned number of contractors on the construction site accountable to the principle contractor:

_____

13. Name(s) of contractors already chosen.

_____
_____
_____
_____
_____
_____
_____

_____ _____

**Principal Contractor** **Date**

_____ _____

**Client** **Date**

* THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.

* **ALL PRINCIPAL CONTRACTORS** THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.

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## ANNEXURE 2

## (COMPANY LETTER HEAD)

## OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :

**SECTION/REGULATION:** _____

**REQUIRED COMPETENCY:** _____

In terms of _____ I, _____

representing the Employer) do hereby appoint _____

As the Competent Person on the premises at _____

(physical address) to assist in compliance with the Act and the applicable Regulations.

Your designated area/s is/are as follows :-

_____

_____

_____

***Date :*** _____

***Signature :-*** _____

***Designation :-*** _____

---

**ACCEPTANCE OF DESIGNATION**

***I,*** _____ ***do hereby accept this Designation and acknowledge that I understand the requirements of this appointment.***

***Date :*** _____

***Signature :-*** _____

***Designation :-*** _____

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## ANNEXURE 3

## (COMPANY LETTER HEAD)

## OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :

### DECLARATION

In terms of the above Act I, _____ am personally assuming the duties and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of Section 16(1), I will, as far as is reasonably practicable, ensure that the duties and obligations of the Employer as contemplated in the above Act are properly discharged.

***Signature :-*** _____

***Date :*** _____

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## ANNEXURE 4

## (LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)

## SITE ACCESS CERTIFICATE

Access to : _____ (Area)
Name of Contractor/Builder :- _____
Contract/Order No.: _____

The contract works site/area described above are made available to you for the carrying out of associated works

In terms of your contract/order with
(company) _____

Kindly note that you are at all times responsible for the control and safety of the Works Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, and all conditions of the Contract pertaining to the site of the works as defined and demarcated in the contract documents including the plans of the site or work areas forming part thereof.

***Signed :*** _____ ***Date :*** _____
***TECHNICAL OFFICER***

---

**ACKNOWLEDGEMENT OF RECEIPT**

***Name of Contractor/Builder :-*** _____ ***I,***
_____ ***do hereby acknowledge and accept the duties and obligations in respect of the Safety of the site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of 1993.***

***Name :*** _____ ***Designation :*** _____

***Signature :*** _____ ***Date :*** _____

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**Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that that have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.**

**INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

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**PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

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## 1 OBJECTIVES

1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and

b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

## 2 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.

2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.

2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.

2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

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## 3 OBLIGATIONS OF THE BIDDER / SUPPLIER

3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and

b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.2 The acceptance and giving of gifts may be permitted provided that:

a) the gift does not exceed R1 000 (one thousand Rand) in retail value;

b) many low retail value gifts do not exceed R 1 000 within a 12 month period;

c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R[illegible]0;

d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;

e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;

f) a Bidder / Supplier may, under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and

g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

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3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.

3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

3.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.

3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## 4 INDEPENDENT BIDDING

4.1 For the purposes of that Certificate in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

a) has been requested to submit a Bid in response to this Bid invitation;
b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.

4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

a) prices;
b) geographical area where Goods or Services will be rendered [market allocation];
c) methods, factors or formulas used to calculate prices;
d) the intention or decision to submit or not to submit, a Bid;
e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
f) bidding with the intention of not winning the Bid.

4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.

4.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.

4.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in

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terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [**NPA**] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

4.7 Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

## 5 DISQUALIFICATION FROM BIDDING PROCESS

5.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.

5.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

## 6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

6.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

6.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

6.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

6.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

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a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(i) he made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;

g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

h) has litigated against Transnet in bad faith.

6.6 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

6.7 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## 7 PREVIOUS TRANSGRESSIONS

7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

## 8 SANCTIONS FOR VIOLATIONS

8.1 Transnet shall also take all or any one of the following actions, wherever required to:

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a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
c) Recover all sums already paid by Transnet;
d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
e) Cancel all or any other contracts with the Bidder / Supplier; and
f) Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

## 9 CONFLICTS OF INTEREST

9.1 A conflict of interest includes, inter alia, a situation in which:
a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
a) Private gain or advancement; or
b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

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## 10 MONITORING

10.1 Transnet will be responsible for appointing an independent Monitor to:
a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000.000 (one hundred million Rand) in value;
b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100,000.000 (one hundred million Rand) in value; and
c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.

10.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

## 11 EXAMINATION OF FINANCIAL RECORDS, DOCUMENTATION AND/OR ELECTRONIC DATA

For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

a) Examine the financial records, documentation and or electronic date of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

## 12 DISPUTE RESOLUTION

12.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

a) **Vexatious proceedings**: these are frivolous proceedings which have been instituted without proper grounds;
b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

## 13 GENERAL

13.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.

13.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.

13.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.

13.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.

13.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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